The Freedom of Proselytism Under the Fundamental Agreement and International Law

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THE FREEDOM OF PROSELYTISM UNDER THE FUNDAMENTAL AGREEMENT AND INTERNATIONAL LAW

Moshe Hirsch*

Religions interact with one another in various ways, however, proselytism unquestionably is one of the most sensitive topics in inter-religious affairs. With respect to the relationship between Jews and Christians, Eugene Fisher described proselytism as “[o]ne of the most ancient and disastrous...tensions between the Jewish and Christian communities.” Conflicting views regarding proselytism also gave rise to considerable tensions between other religions. In light of these opposing perspectives, it is not surprising that the shaping of international norms in this sphere has become a contentious issue in the international arena.

I. CONVERSION AND PROSELYTISM: INTER-RELIGIOUS AND INTER-PERSONAL DIMENSIONS

The processes of proselytism and conversion may be examined on two levels: (1) the inter-religious level, in other words, the interaction between two religious groups, and (2) the inter-personal level, that is, the interaction between the proselytizer and the potential proselyte. These

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2. See Harold J. Berman, Religious Rights in Russia at a Time of Tumultuous Transition: A Historical Theory, in RELIGIOUS HUMAN RIGHTS IN GLOBAL PERSPECTIVE: LEGAL PERSPECTIVES 285, 301-03 (Johan D. van der Vyver & John Witte, Jr. eds., 1996) [hereinafter RELIGIOUS HUMAN RIGHTS] (discussing the tensions stemming from the efforts of the Russian Orthodox Church to repel Western evangelical missionaries); W. Cole Durham, Jr., Perspectives on Religious Liberty: A Comparative Framework, in RELIGIOUS HUMAN RIGHTS, supra, at 1, 4-5 (examining the emergence of proselytism as a source of tension and divisiveness among various religious denominations and its impact on international politics).
inexorably linked dimensions present difficult questions concerning international human rights.

Conversion constitutes a dynamic dimension of every religion. Through this process, religions acquire new believers and lose existing ones. Generally, "(e)very religion strives to increase the number of its adherents, while concomitantly avoiding, as much as possible, conversions of its believers to other religions. The motivation underlying these concurrent aims derives from several sources, the most prominent of which is the metaphysical moral conception of contemporary world religions. This moral vision engenders the "desire to bring about the universal acceptance and application of the vision, which it holds to be universally true in principle."  

The substance of international legal rules pertaining to proselytism are controversial between states and religions because they are designed to regulate activity in a competitive environment. The basic setting in which the process of conversion takes place closely resembles a zero-sum game. In a zero-sum game, whatever one player wins, the other player loses. Likewise in inter-religious conversions, every new convert to a religion is an apostate to another religion. The religions' preferences are opposed and they are considered rivals.

Different religions develop distinct attitudes with respect to conversion and proselytism that evolve over time. The difference between the basic approaches of the major contemporary religions towards proselytism, particularly between Judaism and Christianity, is remarkable. Historically, proselytism has been central to Christianity, however, the Jewish


7. See William R. Hutchison, Christianity, Culture, and Complications: Protestant Attitudes toward Missions, in Pushing the Faith: Proselytism and Civility in a Pluralistic World 78, 79-80 (Martin E. Marty & Frederick E. Greenspahn eds., 1988) [hereinafter Pushing the Faith] (discussing the roots of the Protestant mission); Ste-
faith generally has refrained from proselytic efforts. Notably, although the Catholic Church discontinued missionary campaigns that target Jews, other Christian denominations still engage in such proselytism. The disparate missionary approaches of different religions have influenced greatly their positions concerning the legal question of whether proselytism should be allowed or prohibited.

Under international law, proselytism is viewed as inter-personal in nature and governed by human rights law. The freedom to proselytize implicates two distinct, but related, notions of freedom: the freedom of the proselytizers to conduct proselytizing activities and the freedom of the potential proselyte not to be interfered with by such activities. This distinction is made in pursuance to Sir Isaiah Berlin’s seminal essay *Two Concepts of Liberty.* Berlin distinguished between the “negative” and the “positive” senses of freedom. According to Berlin, the negative sense refers to the freedom to be free of unwanted interference. Berlin argues that “[t]he wider the area of non-interference the wider my freedom.” In contrast, the positive sense refers to individual autonomy to exercise religious freedom without external constraints or coercion. Thus, the positive sense embodies the view that “I am free if, and only if, I plan my life in accordance with my own will.”

When we turn to international human rights law, and particularly to the freedom of religion, the distinction between Berlin’s notions of freedom corresponds to the freedom to maintain a religion without interference and the freedom to persuade another person to abandon his religion in favor of another. Undoubtedly, these two aspects of proselytic

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8. However, Jews actively proselytized in the late ancient and early medieval times. *See* Robert Goldenberg, *The Place of Other Religions in Ancient Jewish Thought, with Particular Reference to Early Rabbinc Judaism,* in *PUSHING THE FAITH,* supra note 7, at 27, 27-40 (tracing the development of proselytic attitudes in the Jewish faith); Robert M. Seltzer, *Joining the Jewish People from Biblical to Modern Times,* in *PUSHING THE FAITH,* supra note 7, at 41, 41-63 (same).


11. *See* id. at 122 (discussing the notion of “negative” freedom).

12. *Id.* at 123.

13. *See* id. at 131-34 (discussing the notion of “positive” freedom).

14. *Id.* at 143-44.
freedom frequently clash. The legal system is assigned the task of reconciling these competing interests. Naturally, the legal equilibrium is dynamic and influenced by various religious and geo-political factors.

II. THE FREEDOM OF RELIGION UNDER THE FUNDAMENTAL AGREEMENT: ASYMMETRIC OBLIGATIONS

The provisions of the 1993 Fundamental Agreement between the Holy See and the State of Israel\(^5\) (1993 Fundamental Agreement) oblige both parties to respect the human right to freedom of religion. However, the 1993 Fundamental Agreement does not precisely define this important obligation. Instead, the Agreement incorporates specific rules pertaining to the freedom of religion that were set out in other international instruments. Surprisingly, the parties' obligations regarding the freedom of religion are defined in separate provisions and are not necessarily symmetrical.

Israel’s obligations in this regard are enumerated in Article 1(1) of the 1993 Fundamental Agreement, which provides that “[t]he State of Israel... affirms its continuing commitment to uphold and observe the human right to freedom of religion and conscience, as set forth in the Universal Declaration of Human Rights and in other international instruments to which it is a party.”\(^6\) Likewise, the Holy See’s obligations appear in Article 1(2) stating that “[t]he Holy See ... affirms the Catholic Church’s commitment to uphold the human right to freedom of religion and conscience, as set forth in the Universal Declaration of Human Rights and in other international instruments to which it is a party.”\(^7\)

These provisions clearly bind both parties to protect the freedom of religion as provided under the 1948 Universal Declaration of Human Rights (1948 Universal Declaration).\(^8\) Yet the application of additional international rules depends upon whether a particular party, and not both, is a party to a certain international instrument. Thus, apart from the mutual obligations established by the 1948 Universal Declaration, each party to the 1993 Fundamental Agreement is bound to protect the freedom of religion only to the extent that it is a party to another interna-


\(^{16}\) Id. art. 1, § 1 (emphasis added).

\(^{17}\) Id. art. 1, § 2 (emphasis added).

tional instrument. Therefore, beyond the mutual obligations under the 1948 Universal Declaration, the parties’ duties regarding the freedom of religion are not necessarily symmetrical.

The primary international instruments which define the freedom of religion are the 1948 Universal Declaration,\(^\text{19}\) the 1966 International Covenant on Civil and Political Rights (ICCPR),\(^\text{20}\) and the 1981 Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (1981 Declaration).\(^\text{21}\) Israel has joined the ICCPR and is a member of the United Nations where the 1981 Declaration was adopted by consensus. The Holy See, on the other hand, has neither joined the ICCPR nor is it a member of the United Nations. As a result, although Israel is bound under the 1993 Fundamental Agreement to observe the freedom of religion vis-à-vis the Holy See, in accordance with the above international instruments, the Holy See is bound to observe this freedom vis-à-vis Israel, in accordance with the 1948 Universal Declaration alone.

The following sections examine the evolution of the freedom to proselytize as part of the freedom of religion. Undoubtedly, the subject of proselytism aroused much controversy during the deliberations of the major global documents that defined freedom of religion under international law.\(^\text{22}\) Finally, this article draws its conclusions regarding the scope of the freedom of proselytism in Holy See-Israel relations.

III. THE EVOLUTION OF THE FREEDOMS TO MAINTAIN AND CHANGE A RELIGION

The first arena of the inter-religious controversy regarding conversion and proselytism was the UN General Assembly’s Third Committee. The draft Article 18 of the 1948 Universal Declaration, as submitted to the General Assembly, provided that: “[e]veryone has the right to freedom

\(^{19}\) See id.


\(^{22}\) On the evolution of the freedom of religion in international law, see BAHIIYIH G. TAHZIB, FREEDOM OF RELIGION OR BELIEF: ENSURING EFFECTIVE INTERNATIONAL LEGAL PROTECTION 63-121 (1996) (surveying the provisions from the major global documents from 1945 to the present); John P. Humphrey, Political and Related Rights, in HUMAN RIGHTS IN INTERNATIONAL LAW: LEGAL AND POLICY ISSUES 171, 176-77 (Theodor Meron ed., 1988) (reviewing the historical development in the global recognition of religious freedom in international legal instruments); Natan Lerner, Religious Human Rights Under the United Nations, in RELIGIOUS HUMAN RIGHTS, supra note 2, at 79 (discussing the evolution of the freedom of religion under international law).
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."\(^2\)

The representative of Saudi Arabia objected to the language contained in the second portion of draft Article 18 that recognized "the right to change one’s religion or belief."\(^3\) Although the objection concerned the freedom of individuals to change religions, the explanation provided by the Saudi Arabian representative, as well as those of other Muslim states, indicated that the objection was aimed at avoiding foreign mission and political intervention.\(^4\) The Third Committee rejected the Saudi Arabian proposal to delete the second part of the draft article. Draft Article 18 was ultimately adopted by twenty-seven states with five Islamic states against and twelve abstentions.\(^5\) The final version of the 1948 Universal Declaration included the original formulation.\(^6\)

The issue of conversion re-emerged during the drafting stages of the ICCPR. The text submitted to the General Assembly provided, in part, as follows:

1) Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to maintain or to change his religion or belief, 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.\(^7\)

When the Third Committee of the General Assembly considered this text, the representative of Saudi Arabia objected to the formulation because it could be construed to favor missionary activities.\(^8\) Following the proposed amendments by Brazil, the Philippines, and the United King-

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25. See TAHZIB, supra note 22, at 73-75 (citing statements of Saudi Arabia’s representative in addressing the U.N. General Assembly’s Third Committee).
26. See id. at 75.
27. See Walkate, supra note 24, at 152.
28. Id. at 153 (quoting draft Article 18, § 1 of the ICCPR); see also id. at 153-54 (discussing the negotiations of the Commission on Human Rights about this provision).
dom, the Third Committee compromised between the conflicting proposals. Under an amendment that was later incorporated into the final version of the ICCPR, the phrase “to maintain or to change his religion or belief” was replaced by the words “to have or to adopt a religion or belief of his choice.” The final text of Article 18 reads as follows:

(1) Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to 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.

The second paragraph of Article 18 was adopted, as amended, by the General Assembly providing that “[n]o one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.” Article 18(3) provides that “[f]reedom to manifest one’s religion or belief 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 main difference between the text of Article 18 of the Universal Declaration and that of the 1966 Covenant is that the explicit freedom “to change his religion” in the Universal Declaration was replaced by more vague words of “to have or to adopt a religion . . . of his choice.”

The third global instrument concerning the freedom of religion, the 1981 Declaration, is not a binding treaty like the ICCPR, but is considered as a guide for interpreting international norms that define the freedom of religion. In light of the former debates, it is not surprising that


31. ICCPR, supra note 20, art. 18, § 1, at 178.

32. Id. art. 18, § 2, at 178.

33. Id. art. 18, § 3, at 178. Subsection 4 of Article 18 provides that: “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.” Id. art. 18, § 4, at 178.

34. See TAZHIB, supra note 22, at 186-88 (reviewing the legal status of the 1981 Declaration in the international arena); Dickson, supra note 30, at 344 (discussing the distinguishing features of the 1981 Declaration); Lerner, supra note 29, at 114 (characterizing the 1981 Declaration as “the most important international instrument regarding religious rights”); Donna J. Sullivan, Advancing the Freedom of Religion or Belief Through the UN Declaration on the Elimination of Religious Intolerance and Discrimination, 82 AM. J. INT'L L. 487, 488 (1988) (asserting that because the 1981 Declaration was drafted in normative terms, it “gives specific content to the general statements of rights to freedom of
the right to change a religion was fiercely debated during the deliberations over the 1981 Declaration.\footnote{35} The trend towards the exclusion, or at least the erosion, of any explicit reference to the right to change a religion has continued and even intensified.

The text of draft Article 1 of the 1981 Declaration, submitted to the General Assembly by the Commission of Human Rights and the Economic and Social Council, was identical to Article 18 of the ICCPR. The language regarding the individual's freedom "to have or to adopt a religion or belief of his choice" was opposed by forty Muslim states.\footnote{36} Again, the desire to avoid tacit approval of proselytism was one of the primary reasons that motivated the Muslim states to propose the deletion of these words.\footnote{37} The Westerners realized that the allegiance of the Muslim states held the key to the adoption of the 1981 Declaration. To garner universal approval, the Western states acquiesced to the inclusion of the latter proposal contingent upon the adoption of a new article in order not to derogate from the Universal Declaration and the International Covenants.\footnote{38}

The final version of Article 1 which emerged from these negotiations provides that:

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have a religion or whatever 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.

\footnote{35} See MYRES S. McDOUGAL ET AL., HUMAN RIGHTS AND WORLD PUBLIC ORDER 677-684 (1980) (discussing the history of the 1981 Declaration); TAHZIB, supra note 22, at 164 (describing the road leading to the adoption of the 1981 Declaration as "long, arduous and full of obstacles"); Roger S. Clark, The United Nations and Religious Freedom, 11 N.Y.U. J. INT'L L. & POL. 197, 197 (1978) (examining the difficulty experienced by the United Nations in reaching an agreement to eliminate intolerance and discrimination based on religion or belief); Natan Lerner, The Final Text of the UN Declaration Against Intolerance and Discrimination Based on Religion or Belief, 12 ISR. Y.B. ON HUM. RTS. 185-88 (1982) (discussing the compromise regarding the "right to change a religion" that was adopted under the 1981 Declaration); Natan Lerner, Toward a Draft Declaration Against Religious Intolerance and Discrimination, 11 ISR. Y.B. ON HUM. RTS. 82-103 (1981) (providing a section-by-section analysis of the proposed draft that later became the 1981 Declaration).

\footnote{36} See Walkate, supra note 24, at 148-150 (discussing the Islamic objections to the "right to change one's religion" provisions).

\footnote{37} See Clark, supra note 35, at 197.

\footnote{38} See TAHZIB, supra note 22, at 167-68; Walkate, supra note 24, at 150.
2. No one shall be subject to coercion which would impair his freedom to have a religion or belief of his choice.

3. Freedom to manifest one’s religion or belief 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.39

Article 8 embodies the compromise that paved the road for the adoption of the 1981 Declaration, providing that: “[n]othing in the present Declaration shall be construed as restricting or derogating from any right defined in the Universal Declaration on Human Rights and the International Covenants on Human Rights.”40

IV. THE FREEDOM OF PROSELYTISM UNDER CONTEMPORARY INTERNATIONAL LAW

The examination of the aforementioned international documents raises the question of whether the freedom of religion includes the freedom to proselytize. First, it is important to distinguish between the internal and the external aspects of the freedom of religion. The internal aspect embraces both the internal (autonomous) freedom to believe in a religion or to change it without interference. The external aspect refers to the freedom to manifest one’s religion either alone or in a community.41 When analyzing the evolution of the freedom of religion under these global instruments, it becomes apparent that while the debate between Muslim and Western states focused on text regarding the internal aspect of the freedom—whether individuals have the right to change religion—the apparent motive underlying the Muslim states’ position concerned the external aspect or the mission and proselytism freedom.

Under general international law, the individual’s freedom to change a religion, on the internal aspect, is hardly disputed.42 Consequently, na-

39. 1981 Declaration, supra note 21, art. 1, at 171.
40. Id. art. 8, at 172.
41. The external freedom to manifest a religion is subject to certain limitations. See id. art. 1, § 3, at 171 (providing that the freedom to manifest a religion may be limited only when necessary "to protect public safety, order, health, or morals or the fundamental rights . . . of others"); ICCPR, supra note 20, art. 18, § 3, at 178 (same). The internal aspect of freedom of religion, however, is not similarly constrained.
tional laws that proscribe apostasy are inconsistent with contemporary international law. The question regarding the freedom of proselytism, however, is still unsettled. This question, as elaborated above, involves two distinct freedoms: the freedom of the proselytizer to conduct proselytizing activities (the "positive" sense of freedom) and the freedom of the potential convert/proselyte not to be interfered in his faith by proselytizing activities (the "negative" sense of freedom). The elements constituting the freedom to proselytize, the negative and positive aspects, are expressed in international human rights law as the freedom to maintain a religion and the freedom to change someone else's religion respectively. We shall first examine the freedom to conduct proselytizing activities. Next, we will consider the relationship between the two freedoms under contemporary international law.

Whether an individual has the (positive) freedom to proselytize is derived from the external dimension of the freedom of religion. Although the freedom of proselytism is not explicitly mentioned in international agreements, the external aspect of the freedom is commonly described as the "freedom, either individually or in community with others... to manifest his religion or belief in worship, observance, practice, and teaching." Article 6 of the 1981 Declaration elaborates further and provides a list of nine specific freedoms included in the freedom of religion, some of which may be relevant to proselytism. Article 6(d) of the 1981 Declaration provides for the freedom "[t]o write, issue and disseminate relevant publications," and Article 6(e) refers to the freedom "[t]o teach a religion or belief in places suitable for these purposes." Additionally, the freedom of expression may protect other proselytic activities.

43. See ANN ELIZABETH MAYER, ISLAM AND HUMAN RIGHTS: TRADITION AND POLITICS 141 (2d ed. 1995) (discussing the Shari'a rule that forbids Muslims from converting from Islam).
44. See supra notes 10-14 and accompanying text (discussing these concepts).
45. 1981 Declaration, supra note 21, art. 1, § 1, at 171; see also ICCPR, supra note 20, art. 18, § 1, at 178; 1948 Universal Declaration, supra note 18, art. 18, at 74.
46. 1981 Declaration, supra note 21, art. 6, §§(d)-(e), at 172. Moreover, Article 6 also states that this list of freedoms does not constitute an exhaustive list. See id. (providing that "the right to freedom of... religion... shall include, inter alia, the following freedoms"); see also TAHZIB, supra note 22, at 183 (enumerating various freedoms that were excluded from Article 6 of the 1981 Declaration); Human Rights Committee, supra note 42, at 233 (listing various acts that fall under the rubric of manifesting a religion or belief).
47. See ICCPR, supra note 20, art. 19, § 2, at 178 ("Everyone shall have the right to freedom of expression... "); 1948 Universal Declaration, supra note 18, art. 19, at 74-75 (same); infra note 57 (discussing the relationship between the freedom of religion and the freedom of expression).
In light of these international agreements, it is clear that where proselytism is part of "manifesting a religion with others," proselytism is prima facie included with the freedom of religion. This is clearly the case with some religions like Christianity, for whose adherents the mission is an essential duty. In opposition stands the freedom of adherents of other faiths to practice their religion without interference. The ICCPR and the 1981 Declaration describe this autonomy as the "freedom to have a religion." The relationship between the freedom to maintain a religion and the freedom to change a religion contained in international agreements warrants careful scrutiny.

The evolution of the texts of the universal documents shows that the emphasis has shifted from the freedom to change a religion toward an emphasis on the individual freedom to retain a religion without interference. Article 18 of the Universal Declaration explicitly refers to the freedom to change a religion, but does not mention the freedom to maintain a religion. Article 18 of the ICCPR refers to the freedom "to have a religion," but obscures the freedom to change a religion—"freedom to adopt a religion... of his choice." Article 1 of the 1981 Declaration mentions the "freedom to have a religion" but the reference to freedom to change a religion was deliberately deleted from the final text.

This shift does not indicate that the freedom to change one's religion on the internal level is not protected under international law, or that proselytism is not included within the freedom of religion on the external level. However, the tendency to emphasize the freedom to maintain a religion and to weaken, or obscure, the freedom to change a religion should not be underestimated. Rather, this trend should be given due weight when delineating the border between the freedom of proselytism and the individual's freedom to maintain a religion without interference.

The boundary between the freedom of proselytism and the freedom to maintain a religion without interference may be drawn in various locations alongside a continuum. At one end of the continuum, the freedom to maintain a religion is completely protected by the prohibition against proselytism, at the other, an absolute protection is accorded to the free-

48. See supra note 7 and accompanying text (discussing the Christian mission); infra notes 59-80 and accompanying text (discussing the Kokkinakis case).

49. ICCPR, supra note 20, art. 18, § 1, at 178.

50. See supra note 38 and accompanying text (noting that although the reference to freedom to change a religion was deleted from the 1981 Declaration, Article 18 preserves this freedom under the Universal Declaration and international covenants).

51. See text accompanying note 45.
dom of proselytism by a norm that prohibits any restriction on such activities.

Two intermediate positions may reconcile the disparity between these extremes. Nearer to the position assigning maximum protection to the freedom of proselytism, it is possible to set a rule permitting proselytism with an exception prohibiting coercive acts, which impairs free choice. Closer to the position assigning maximum protection to the freedom to maintain a religion, it is possible to consider a religious belief as a "restricted access domain." This "semi-private" religious realm should be protected from certain intrusive acts, including some proselytism activities.

<table>
<thead>
<tr>
<th>Maximum protection to the freedom to maintain a religion (complete prohibition of proselytism).</th>
<th>Restricted access religious domain (proselytism activities penetrating the &quot;semi-private&quot; realm are prohibited).</th>
<th>Only coercive acts prohibited.</th>
<th>Maximum protection to the freedom to change a religion (absolute freedom of proselytism).</th>
</tr>
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</table>

The difference between the two intermediate positions on the continuum is the degree of limitation imposed on proselytic activities. Whereas only coercive acts are prohibited under the second formulation, additional proselytic activities which invade the "semi-private" domain are prohibited under the first formulation. Thus, both intermediate models prohibit forced conversion or exerting improper pressure, for example,

52. The prohibition on coercion is explicitly mentioned in Article 18, subsection 2 of the ICCPR, and Article 1, subsection 2, of the 1981 Declaration. See ICCPR, supra note 20, art. 18, § 2, at 178; 1981 Declaration, supra note 21, art. 1, § 2, at 171. These provisions should certainly not dictate that all proselytic activities which do not involve coercion are permitted. Such a conclusion could have been justified if Article 18(1) of the Covenant and Article 1(1) of the Declaration would have protected only the freedom to proselytize and not the freedom to maintain a religion. Thus, the two competing freedoms are included in the first paragraph of these articles (though the freedom of proselytism only implicitly, as part of the freedom to manifest a religion), and the borderline between them should be drawn "within" the first paragraph, and not by a distinction between the main clause stating the freedom and the second clause dealing with coercion.

53. See Ruth Gavison, Privacy and the Limits of Law, 89 YALE L.J. 421, 428-30 (1980) (defining "privacy" as "a limitation of others' access to an individual"); see also Lerner, supra note 29 (asserting that a "zone of privacy" is tantamount to a "zone of freedom" comprised of various qualities and lifestyles every individual seeks to experience).

54. See infra text accompanying notes 55-58 for the question of which proselytism activities trespass the "semi-private" religious realm.
by material inducements. However, actively approaching other persons in order to persuade them to indicate or discuss their religious beliefs would be permissible under the second intermediate position, but could be prohibited under the first intermediate position protecting the "semi-private" domain.

Having defined the alternative locations on the continuum, the unsettled question is which position reflects prevailing principles under international law. First, in light of the aforementioned global instruments, it is clear that the two extreme positions on the scale are illegal under international law. The freedom to proselytize, as a component of the freedom to manifest a religion, is protected under international law, and consequently, a sweeping prohibition on proselytism is unlawful. On the other hand, the freedom to maintain a religion is also protected under international law, and an absolute freedom of proselytism, without limitation will unquestionably be also illegal.

The two intermediate positions which restrict proselytism to a different degree are central to the dilemma regarding the freedom to proselytize under international law. The intermediate position which prohibits only coercive acts is more consistent with the freedom to change a religion. On the other hand, the "semi-private" position is more in line with the freedom to maintain a religion. The above analysis of the evolution of international law regarding the relationship between the freedoms to maintain and to change a religion demonstrates that the current trend in international law emphasizes the freedom to maintain a religion, thus obscuring the freedom to change a religion. This trend suggests that the intermediate position representing the restricted access realm is more consistent with contemporary international law.

Accordingly, this analysis of the evolution of the freedom of religion leads to the conclusion that present international law permits proselytism to the extent that it does not traverse the "limited access religious realm" of individuals. One may suggest that Article 8 of the 1981 Declaration preserves completely the previous equilibrium between the clashing freedoms as it existed under the 1966 ICCPR and the 1948 Universal Declaration. This view, however, overlooks the explicit and deliberate


56. See supra note 54 and accompanying text for further elaboration on proselytism activities which are prohibited under the "semi-private" religious concept.
change in the main provision in the 1981 Declaration (Article 1) which
was made following adamant opposition of forty Muslim states to the
former treaty provisions.\footnote{Proselytism frequently involves freedom of expression, which is also protected
under international human rights law. The above provisions regarding the freedom of re-
ligion seem to constitute lex-specialist norms which regulate the subject of proselytism.
The motives underlying the freedom of expression do not necessarily apply to proselytism.
Proselytism may be perceived as an instrument to preserve the basic freedom to change a
religion. This, however, should not detract from the need to protect the corresponding
freedom to maintain a religion without interference of proselytism. The concept of “semi-
private religious realm,” it is submitted, leads to an adequate balance between the com-
peting freedoms.}

The theme underlying the “semi-private” religious domain is that per-
sons should not be asked to reveal or discuss their religious preference—
either explicitly or implicitly through a request to participate in a relig-
ious activity—unless they have previously expressed a desire to do so.
Thus, for example, operating a religious center that provides religious ar-
ticles or services to persons who indicate their will to receive them is
permitted under this principle.\footnote{Similarly, the operation of religious television and radio channels, as well as
mailing various documents, is permissible under this principle.}

\footnote{Proselytism is expressly forbidden under the Greek Constitution. \textit{See GREECE CONST.} pt. II, art. 13, § 2 (“Proselytism is
prohibited.”). Mrs. Kokkinkas was eventually acquitted. \textit{See id.}}

Approaching a person without a prior invitation in order to persuade him to discuss his religion, whether pri-
vately or publicly, constitutes a trespass upon the “semi-private” relig-
ious realm and should be prohibited.

V. THE KOKKINAKIS CASE AND GENERAL INTERNATIONAL LAW

Before concluding our work, it would useful to examine the judgment
rendered by the European Court of Human Rights in \textit{Kokkinakis v.
Greece} in light of the principles of general international law regarding
the freedom of proselytism. Mr. and Mrs. Kokkinakis visited the home
of Mrs. Kyriaki, a member of the Greek Orthodox Church, to discuss
with her possible conversion to the Jehovah’s Witnesses. Mr. Kokkinakis
was subsequently found guilty and prosecuted under Greek law that pro-
scribed proselytism.\footnote{See \textit{Kokkinakis}, 36 Y.B. Eur. Conv. on H.R. at 182 (discussing the provisions of
the Greek statutes that define and punish proselytism). Proselytism is expressly forbidden
under the Greek Constitution. \textit{See GREECE CONST.} pt. II, art. 13, § 2 (“Proselytism is
prohibited.”). Mrs. Kokkinkas was eventually acquitted. \textit{See id.}} His initial sentence was four months impro

\footnote{36 Y.B. Eur. Conv. on H.R. 181 (Eur. Ct. on H.R. 1993); \textit{see also} T. Jeremy
Gunn, \textit{Adjudicating Rights of Conscience Under the European Convention on Human
Rights}, in \textit{RELIGIOUS HUMAN RIGHTS}, supra note 2, at 305, 318-30 (discussing the \textit{Kok-
kinakis} case).}
ment, which was later converted into a pecuniary penalty. In his application to the European Court of Human Rights, Mr. Kokkinakis argued, inter alia, that the Greek criminal proceedings infringed his freedom of religion under Article 9 of the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), which is very similar to Article 18 of the 1948 Universal Declaration.

The European Commission and the Court of Human Rights ruled that proselytism is included within the freedom to manifest one’s religion, a right protected by Article 9 of the ECHR. Consequently, the Greek statute constituted an interference with Mr. Kokkinakis’s exercise of his right under the article. Next, the court considered whether the Greek law was justified under the permitted restrictions on the freedom of religion provided under Article 9(2) of the ECHR. Greece contended that the law aimed at prohibiting proselytism in order to protect the freedom of religion of other people maintaining a different religion from that of Mr. Kokkinakis. Both the Commission and the court agreed that the law “has been in pursuit of a legitimate aim under Article 9 para. 2 of the ECHR: the protection of the rights and freedoms of others, relied on by the Government.”

The next question examined by the court was whether the above legislation was necessary in a democratic society. The court made a distinction between:

bearing Christian witness and improper proselytism. The former corresponds to true evangelism, which a report drawn up in 1956 under the auspices of the World Council of Churches de-

61. See Kokkinakis, 36 Y.B. Eur. Conv. on H.R. at 182.
62. Nov. 4, 1950, 213 U.N.T.S. 221, 230 [hereinafter ECHR]. Article 9, section 1 of the ECHR provides: “(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.” Id.
63. See 1948 Universal Declaration, supra note 18, art. 18, at 74.
64. See Kokkinakis, 36 Y.B. Conv. on H.R. at 182-83.
65. See id. at 183.
66. See id. Article 9, section 2, of the ECHR provides that:
2. Freedom to manifest one’s religion or belief 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.
67. See Kokkinakis, 36 Y.B. Conv. on H.R. at 183.
68. Id.
scribes as an essential mission and responsibility of every Christian and every church. [T]he latter represent[s] a corruption or deformation of it . . . [and] is not compatible with respect for the freedom of thought, conscience and religion of others. 69

The court observed that the Greek courts established Mr. Kokkinakis's liability by merely citing the Greek legislation without specifying in what way he had attempted to convince his neighbor by improper means. 70 Consequently, the court held that Mr. Kokkinakis' conviction was unjustified by a pressing social need. 71 Moreover, the court concluded that the conviction was disproportionate to the legitimate legislative aim and, as a consequence, was not necessary in a democratic society. 72 The court held that the Greek law, as applied to Mr. Kokkinakis, violated Article 9 of the ECHR. 73

By evaluating the Kokkinakis decision in light of general principles of international law, it is clear that the different legal rules prevailing in the different systems lead to different conclusions regarding the freedom to proselytize. First, it is important to examine similar legal principles recognized in both the European and global frameworks. The Commission and the court in Kokkinakis recognized that the proselytism issue involves both the freedom to manifest a religion through proselytism and the freedom of the potential convert to maintain his religion. This was the basis for the intermediate ruling accepting that the Greek prohibition on proselytism “was in pursuit of a legitimate aim”: protecting the freedoms of others. 74 This ruling is certainly consistent with the global principles regarding proselytism.

Confronted with divergent aspects of the rival freedoms to proselytize and to maintain a religion, the court distinguished between “bearing Christian witness” and “improper proselytism,” 75 and held that the latter is unlawful. Although the court did not define “improper proselytism,” it cited the report drawn under the auspices of The World Council of Churches noting that proselytism may include violence, brainwashing, offering material or social advantages, or exerting improper influence on people in distress. 76 This description suggests that the court drew the line

69. Id.
70. See id.
71. See id.
72. See id.
73. See id.
74. Id.
75. Id.
separating lawful and unlawful proselytism along the lines of the prohibition of "coercion" established in the ICCPR and 1981 Declaration.  

The texts of Article 9 of the ECHR and Article 18 of the Universal Declaration are quite similar. It appears that the European Court of Human Rights' attempt to balance the competing freedoms to maintain and to change religion through the limitation of coercion is compatible with the texts of these instruments. However, the court's equilibrium is not necessarily consistent with the significant changes that occurred on the global level following the conclusion of the ECHR. The developments in general international law, expressed in the different texts of the ICCPR and the 1981 Declaration, shifted the focus from the freedom to change a religion toward the freedom to maintain a religion without interference. This process led to the current balance between these freedoms: the "semi-private" religious realm.  

VI. THE PARTIES' OBLIGATIONS REGARDING PROSELYTISM UNDER THE FUNDAMENTAL AGREEMENT  

The obligations undertaken by the parties to the 1993 Fundamental Agreement regarding the freedom of religion are asymmetrical: in addition to the Universal Declaration, each party is bound to observe this freedom in accordance with international instruments to which it is a party. An analysis of the international instruments shows that different principles that balance the freedom to maintain a religion without interference and the freedom to proselytize emerged from different instruments. 

The Holy See is bound to observe the freedom of religion in accordance with the 1948 Universal Declaration. The Universal Declaration  

77. The 1981 Declaration and the ICCPR both prohibit coercive proselytic tactics that impair the freedom of religion. See 1981 Declaration, supra note 21, art. 1, § 2, at 171; ICCPR, supra note 20, art. 18, § 2, at 178. 

78. See supra notes 50-52 and accompanying text (discussing the shift in focus toward maintaining a religion without interference under international agreements). 

79. Apart from the different legal principles that prevail in the different legal systems, the result also may have been influenced by the fact that the judges in the Kokkinakis case were European. The text of the judgment, including the crucial distinction made by the court between "bearing Christian witness" and "improper proselytism" (which was cited from a report drawn up under the auspices of the World Council of Churches), suggests that these judges that comprised a majority of the court were influenced by Christian beliefs. Christianity maintains starkly contrasting views regarding proselytism in comparison to some other religions. 

80. The Holy See is not a party to the ICCPR and is not a member of the United Nations which adopted the 1981 Declaration.
emphasizes the freedom to change a religion but does not explicitly mention the freedom to maintain a religion. Thus, the principle that emerges from the Universal Declaration is similar to that which was adopted by the European Court of Human Rights in Kokkinakis: proselytism is permitted as long as it does not involve coercive acts impairing free choice.81

Israel is bound under the 1993 Fundamental Agreement to observe the freedom of religion in accordance with the Universal Declaration, the ICCPR, and the 1981 Declaration. The principle that emerges from these instruments creates a different balance between the competing freedoms: proselytic activities are allowed to the extent that they do not invade the "semi-private" religious domain of others. Thus, the obligations regarding proselytism assigned to the Holy See and Israel under the Fundamental Agreement are asymmetrical.

VII. CONCLUSION

The obligations accepted by Israel and the Holy See under the Fundamental Agreement regarding freedom of religion are not the same. Apart from the Universal Declaration, both parties are bound to observe the international instruments to which they are parties. Because of their asymmetric legal postures, the parties are bound to comply with different duties concerning proselytic freedom. Although the Holy See is bound only to observe such freedom of proselytism with the narrow exception regarding coercive tactics, Israel is obligated to respect proselytic freedom to the extent that such efforts do not involve activities which intrude upon the "semi-private" religious sphere.

The evolution of international law reveals that the freedom to proselytize is a source of tension not only between Jews and Christians, but also among the other world religions. Developments in international human rights law demonstrate that norms in this sphere are affected by the religious beliefs of different religions and geo-political influences of states backing these religions. Notwithstanding the global controversy concerning the breadth of proselytic freedom, certain rules have gained broad acceptance under modern international law.

The rules governing proselytism that are widely accepted in the international community today are threefold. First, everyone has the freedom to change his religion, and consequently, national laws that prohibit or

punish "apostasy" are unlawful. Second, proselytism is included in the freedom to manifest a religion for some religions and, therefore, protected to a certain extent under international law. Consequently, national laws prohibiting all proselytic activities are not consistent with international human rights law. Finally, it is accepted that coercive measures impairing free choice involved in proselytism are illegal.

The most controversial issue concerns the balance between the freedom to maintain a religion without interference and the freedom to proselytize. The evolution of general international law on the freedom of religion leads us to the conclusion that the border between these two competing freedoms should be drawn along the "semi-private" religious realm of each person. Certain proselytic activities that penetrate this protective region should be prohibited under international law. The freedom of believers to be free from unwanted interference should not be overlooked. The specific rules derived from the concept of restricted-access religious domain are not yet fully clear. Future developments may further clarify this sensitive issue in international human rights law.