“Freedom of religion is a key freedom for human rights. Where there is no freedom of religion all other freedoms suffer, and when there is freedom of religion flourishing, other freedoms are flourishing as well. Religion is not the opium of the people, it is their proprium.” ¹

I. Introduction

This quote from a lecture delivered by Gerhard Robbers in 2002 in Mexico City encapsulates in three sentences the importance of religious freedom for the whole range of human rights. Indeed, freedom of religion or belief has been part and parcel of human rights guarantees, at the international, regional and national levels. Gerhard Robbers rightly stressed the indivisibility, interdependence and interrelatedness of all human rights: violations of religious freedom may also have adverse effects for other human rights, such as freedoms of opinion, expression, peaceful assembly and association as well as the liberty of parents to ensure the religious and moral education of their children in conformity with their own convictions. In this context, shrinking civic space for faith actors is often an indicator for violations of various human rights. At the same time, if individual and communal expressions of religions or beliefs, based on equality, tolerance and mutual respect, are freely possible then also other human rights may thrive.

What is needed is a holistic approach, rather than just looking at one human right in isolation or jumping immediately to a balancing exercise between allegedly competing human rights. Oftentimes, religious freedom is perceived to be in tension with the principle of equality or they even seem to contradict each other. For example, should a baker be allowed to refuse – based on his or her religious beliefs – to make a custom wedding cake for the marriage of a gay couple?2 Can a counsellor for psycho-sexual therapies be legitimately dismissed after informing his employer of a conflict between his religious beliefs and therapy with same-sex couples?3 And can a State prohibit concealing the face in public areas and convict a woman for wearing a full face veil (niqab) that she displays motivated by her religious belief?4 These three cases, which were recently decided by national and regional courts as well as the United Nations (UN) Human Rights Committee, illustrate the perceived antagonism between religions and rights.

II. Religions versus Human Rights

History is replete with examples of tensions and even outright clashes between religious leaders and human rights. Shortly after the French revolution, Pius VI in his papal encyclical Quod aliquantum (1791) castigated the National Assembly’s adoption of the civil constitution of the clergy, especially the establishment of “this absolute liberty, which not only assures the right of not being disturbed in regard to his religious opinions, but which also grants that license of thought, of writing and even shamelessly publishing on the subject of religion whatever the most unruly imagination might suggest. This monstrous right nevertheless appears to the Assembly to result from the equality and liberty which are natural to all men. But what could there be more outrageous than to establish among men this equality and this unbridled liberty which will snuff out reason, the most precious gift that nature has given to man, and the only one which

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3 See ECtHR, Eweida and Others v. The United Kingdom, appl. nos. 48420/10 et al., judgment, 15 January 2013.
distinguishes him from the animals?" In the 19th century, Pius IX condemned the “civil liberty of every form of worship” as one of the grave errors of modernity, arguing that it corrupted “the morals and minds of the people” and propagated “the pest of indifferentism”. After these papal documents it took the Roman Catholic Church more than a century until the Second Vatican Council unequivocally declared in 1965 “that the human person has a right to religious freedom.”

However, religious caveats related to human rights and dignity are not only an issue of the past. In 2008, the Russian Orthodox Church’s Basic Teaching on Human Dignity, Freedom and Rights stressed the following: “In Orthodoxy the dignity and ultimate worth of every human person are derived from the image of God, while dignified life is related to the notion of God’s likeness achieved through God’s grace by efforts to overcome sin and to seek moral purity and virtue. Therefore, the human being as bearing the image of God should not exult in this lofty dignity, for it is not his own achievement but a gift of God. Nor should he use it to justify his weaknesses or vices, but rather understand his responsibility for the direction and way of his life. Clearly, the idea of responsibility is integral to the very notion of dignity.”

Furthermore, States have entered a large number of religion-based reservations, declarations and understandings when acceding to international human rights treaties. For example, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) has triggered the highest number of reservations, more than half of which are inspired by

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religion or belief.  

There are more than 100 references to the Islamic Sharia in reservations and objections to reservations made by States parties to CEDAW, for example the following one: “The Government of the Republic of Maldives will comply with the provisions of the Convention, except those which the Government may consider contradictory to the principles of the Islamic Sharia upon which the laws and traditions of the Maldives is founded.” Finland and Germany subsequently objected to this reservation, stressing the need to bring its national legislation into compliance with obligations under the CEDAW with a view to withdrawing the reservation. On 24 February 2020, the Maldives Government notified the UN Secretary-General of its decision to partially withdraw its reservations to article 16 of the CEDAW, “without prejudice to Islam, which is the basis of all laws in the Maldives as stipulated in the Constitution of the Republic of Maldives”.

A similar juxtaposition of Religions versus Human Rights was prevalent for more than a decade in resolutions on “combating defamation of religions”, that had been tabled by the Organisation of the Islamic Conference (OIC, renamed in 2011 to Organisation of Islamic Cooperation) at the UN Commission on Human Rights and General Assembly. While the first two resolutions in 1999 and 2000 passed without a vote, the subsequent debate and voting patterns became more polarized. The UN Special Rapporteur on freedom of religion or belief, Asma Jahangir, stressed in 2007 that “blasphemy laws and the concept of ‘defamation of religions’ can be counter-productive since they may create an atmosphere of intolerance or fear” and that related accusations “might stifle legitimate criticism or even research on practices and laws appearing to be in violation of human rights but that
are, or are at least perceived to be, sanctioned by religion.” In 2011, a joint open letter of 113 civil society organizations urged State representatives in the UN Human Rights Council to reject any reference to “defamation” or “denigration” of religions, religious symbols and persons as well as to reject any wording which seeks to protect them from criticism. Ultimately, the OIC stopped tabling resolutions on “combating defamation of religions” and instead the Human Rights Council adopted by consensus its resolution 16/18 on “combating intolerance, negative stereotyping and stigmatization of, and discrimination, incitement to violence and violence against, persons based on religion or belief”. The title and substance of this and subsequent UN resolutions underlines that neither religion(s) as such nor their reputation are protected, but rather the human beings who face discrimination, violence or incitement based on their religion or belief.

The Rabat Plan of Action of 2012 even goes one step further by urging States that still have anti-blasphemy laws to repeal them, “as such laws have a stifling impact on the enjoyment of freedom of religion or belief, and healthy dialogue and debate about religion.” In addition, the Rabat Plan of Action articulates three specific core responsibilities of religious leaders: (a) to refrain from using messages of intolerance or expressions which may incite violence, hostility or discrimination; (b) to speak out firmly and promptly against intolerance, discriminatory stereotyping and instances of hate speech; and (c) to clarify that violence cannot be justified by prior provocation.

18 Rabat Plan of Action (fn. 17), para. 36.
III. Faith for Rights

These developments paved the way and provided building blocks for the “Faith for Rights” framework. In 2017, the then UN High Commissioner for Human Rights Zeid Ra’ad Al Hussein explained the rationale as follows: “No religious precept, however long established and proclaimed under whatever banner, should be shielded from scrutiny when human dignity is at stake. Education, academic freedom and freedom of expression are key ingredients for confronting new challenges as well as for facilitating free and creative thinking. The various stakeholders should never accept the false dichotomy of ‘faith versus rights’. Human rights are neither opposed to faith, nor vice versa. State religious authorities, faith-based and civil society actors should work jointly for the constructive approach of ‘Faith for Rights’, which upholds human dignity and equality for all. While religions have been manipulated across human history to divide people, faith may unite all believers in line with the Beirut Declaration’s message of ‘unity in diversity’.”

In the Beirut Declaration on “Faith for Rights”, faith-based and civil society actors stressed that all believers – whether theistic, non-theistic, atheistic or other – should join hands and hearts in articulating ways in which “Faith” can stand up for “Rights” more effectively so that both enhance each other. They call for cross-disciplinary reflection and action on the deep connections between religions and human rights: “Faith and rights should be mutually reinforcing spheres. Individual and communal expression of religions or beliefs thrive and flourish in environments where human rights, based on the equal worth of all individuals, are protected. Similarly, human rights can benefit from deeply rooted ethical and spiritual foundations provided by religion or beliefs.”

Religious actors yield considerable influence on the hearts and minds of millions (if not billions) of believers, which they may use either for promoting or undermining human rights. In view of the important role of religious actors and institutions, they have specific human rights responsibilities: “No one shall be subject to discrimination by any State, institution,
group of persons or person on the grounds of religion or belief”, as stressed by article 2 (1) of the 1981 UN Declaration on the Elimination of all Forms of Intolerance and of Discrimination Based on Religion or Belief. This provision highlights direct responsibilities of religious institutions, leaders and even each individual within religious or belief communities, while States of course continue to bear the primary responsibility for promoting and protecting all human rights and fundamental freedoms of those within their territory and of every person subject to their jurisdiction. Yet under certain circumstances, in particular when non-State actors exercise effective control over territory or population, for example as de facto authorities, they are also obliged to respect international human rights as duty bearers.

In this context, the Beirut Declaration draws an analogy to the responsibilities of religious leaders: “As much as the notion of effective control provides the foundation for responsibilities of non-State actors in times of conflict, we see a similar legal and ethical justification in case of religious leaders who exercise a heightened degree of influence over the hearts and minds of their followers at all times.” In addition, States parties to the International Covenant on Civil and Political Rights (ICCPR) must prohibit any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence. If a religious leader incites to hatred or violence in the name of religion, then it is likely that such a sermon meets the high threshold of article 20 (2) of the ICCPR in view of the speaker’s status and intent, the content, context and extent of the speech as well as risk of harm.

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24 Beirut Declaration (fn. 20), para. 19.
26 Article 20, paragraph 2 ICCPR. As of 24 March 2020, it has 173 States parties, see https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chap=4&clang=_en.
27 See Beirut Declaration (fn. 20), para. 21, as well as the six-part threshold test of the Rabat Plan of Action (fn. 17), para. 29.
The Beirut Declaration is meant as the preambular part of the operational 18 commitments on “Faith for Rights”, which were adopted at the same expert meeting in March 2017 by faith-based and civil society actors under the auspices of the Office of the High Commissioner for Human Rights. The choice of the number 18 alludes to article 18 of the Universal Declaration of Human Rights and article 18 of the ICCPR, both of which guarantee freedom of thought, conscience, religion and belief. The 18 commitments on “Faith for Rights” are not imposed as duties by States, but rather constitute self-commitments of faith-based non-State actors. In tweet-length summary, they commit themselves:

1. To stand up and act for everyone’s right to free choices, particularly for everyone’s freedom of thought, conscience, religion or belief;
2. To use the declaration on “Faith for Rights” as a common minimum standard of interaction between theistic, non-theistic, atheistic or other believers;
3. To promote constructive engagement on the understanding of religious texts through critical thinking and debate on religious matters;
4. To prevent the notions of “State religion” and “doctrinal secularism” from being used to discriminate or reduce the space for diversity of religions and beliefs;
5. To ensure non-discrimination and gender equality, particularly regarding harmful stereotypes and practices or gender-based violence;
6. To stand up for the rights of all persons belonging to minorities and to defend their freedom of religion or belief, particularly in cultural, religious, social, economic and public life;
7. To publicly denounce all instances of advocacy of hatred that incites violence, discrimination or hostility in the name of religion or belief;
8. To monitor interpretations, determinations or other religious views that manifestly conflict with universal human rights norms and standards;
9. To condemn any judgemental determination that disqualifies the religion or belief of another individual or community, exposing them to violence in the name of religion;

10. Not to tolerate exclusionary interpretations on religious grounds which instrumentalize religions, beliefs or their followers for electoral purposes or political gains;
11. Not to oppress critical voices on religious matters in the name of “sacri
tity”, and to advocate for repealing any anti-blasphemy and anti-aposta
sy laws;
12. To review the curriculums and teaching materials wherever some reli
gious interpretations seem to encourage or tolerate violence or discrimi
nation;
13. To engage with children and youth against violence in the name of reli
gion and to promote their active participation in decision-making;
14. To ensure that humanitarian aid is given regardless of the recipients’ creed and that aid will not be used to further a particular religious standpoint;
15. Not to coerce people in vulnerable situations into converting from their religion or belief, while fully respecting everyone’s freedom to have, adopt or change a religion or belief;
16. To leverage the spiritual and moral weight of religions and beliefs in order to strengthen the protection of universal human rights and develop preventative strategies;
17. To develop sustained partnerships with specialised academic institutions to promote interdisciplinary research, programs and tools for implementing the 18 commitments; and
18. To use technological means more creatively and consistently in order to produce capacity-building and outreach tools and make them available for use at the local level.

One of the innovative features of the Beirut Declaration and its corre
sponding 18 commitments on “Faith for Rights” is the combination of hu
man rights language with religious or belief quotes. For example, commit
ment V on non-discrimination and gender equality is supported by reli
gious quotes from the Talmud, Bible, Qu’ran, Hadith, Guru Granth Sahib and ‘Abdu’l-Bahá as well as a joint general comment/recommendation by UN treaty bodies on harmful practices. Former High Commissioner for Human Rights Zeid Ra’ad Al Hussein welcomed that “this approach in itself is more than symbolic, since it constitutes a referential bridge – instead of an ocean of divide – between faith and rights.”\(^\text{30}\) There are also references to the Golden Rule and to philosophical quotes from humanists and

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\(^{30}\) \textit{Al Hussein} (fn. 19).
indigenous leaders, in line with the broad definition of “faith” that includes all theistic, non-theistic, atheistic and other beliefs.

The new High Commissioner for Human Rights, Michelle Bachelet, stressed in 2019 that the “Faith for Rights” framework aims at transforming messages of mercy, compassion and solidarity into inter-communal and faith-based projects towards social, developmental and environmental change.31 While the 18 commitments obviously do not have the status of legally binding norms of hard law, they have already been considered as soft law standards or at least as “softish law” in the making.32 In this regard, it is important to note that the “Faith for Rights” framework has been crafted jointly and was unanimously adopted by members of several UN human rights mechanisms, faith-based actors and civil society organizations. Between 2017 and 2019, a total of 42 UN documents referred to “Faith for Rights”, notably in reports by the Secretary-General, High Commissioner for Human Rights, Special Rapporteurs, Treaty Bodies, States and non-governmental organizations (NGOs). Furthermore, the 18 commitments have the potential to affect the behaviour of stakeholders, which is indicative of soft law standards.33 For example, the Group of Twenty (G20) Interfaith Forums in Buenos Aires and Osaka yielded the policy recommendation “to reduce incitement to hatred by supporting religious leaders and faith-based actors in fulfilling their human rights responsibilities as summarized in the Beirut Declaration and the 18 commitments of the ‘Faith for Rights’ program.”34 The faith-based NGO Arigatou International published a multi-religious study entitled “Faith and Children’s

Rights”, which also draws upon the “Faith for Rights” framework. Moreover, the Religious Track of the Cyprus Peace Process (a peacebuilding initiative with the religious leaders of Cyprus, under the auspices of the Embassy of Sweden in Nicosia) has translated the Beirut Declaration and its 18 commitments into Greek and Turkish, using them for advocacy purposes and in human rights education projects across the island.

In this context, faith-based actors and UN human rights mechanisms have jointly articulated a learning tool on the complementarity and tensions among religions, beliefs and human rights. The resulting #Faith4Rights toolkit, which was launched in January 2020, translates the 18 commitments into practical peer-to-peer learning modules. The toolkit compiles resources, exercises, artistic expressions and cases to debate, which enhance the skills of faith actors to manage religious diversity in real-life situations towards the aims of “Faith for Rights”. One case to debate relates to the responsibilities of religious and political leaders in the face of an epidemic, also exploring specific questions raised during the coronavirus crisis in 2020. The toolkit taps into social media and remains open for adaptation by facilitators in order to tailor the modules to the specific context of the participants. Its annex also includes several moot court cases, containing elements of – or even direct references to – the 18 commitments on “Faith for Rights”, for competitions organized by the Universities of Pretoria and Oxford, the European Academy of Religion and the Brazilian Center of Studies in Law and Religion.

IV. The trajectory from “Religions versus Human Rights” to “Faith for Rights”

The opening quote by Gerhard Robbers, in which he noted as early as 2002 that “where there is no freedom of religion all other freedoms suffer,
and when there is freedom of religion flourishing, other freedoms are flourishing as well”,\(^38\) resonates strongly with the 2017 Beirut Declaration on “Faith for Rights”. The latter formulates a similar idea, namely that religious expressions flourish when human rights are protected and that the ethical and spiritual foundations provided by religion or beliefs are beneficial also to human rights. Deeper exploration of these foundations “can help to debunk the myth that human rights are solely Western values”,\(^39\) as stressed by High Commissioner for Human Rights Michelle Bachelet: “[W]e hear so often the false argument that our universal human rights are not actually universal, that they are somehow only ‘Western’. Human rights are an inherent part of every society. They constitute a common heritage of all nations, cultures and religions.”\(^40\)

Fifteen years before the 18 commitments on “Faith for Rights” were adopted in Beirut, Gerhard Robbers had already advocated in his Mexico City lecture a wide understanding of tolerance, acceptance, respect for diversity and equality: “Tolerance must be understood in a broad, in a positive sense, seen within the structures set by the idea of human rights: Tolerance means to accept the other belief, to acknowledge its legitimate being, accept it as an expression of good human existence, respected in being different, like my neighbour as an individual is and must be different from me as an individual. Only if he is different as an individual I can be a true and individual myself. And in this at least we are all equal. Tolerance must be more than mere negative bearing of what one cannot change, tolerance should mean to be strong enough to learn, strong enough to feel enriched, indeed, by those who differ.”\(^41\)

The above-mentioned historic and contemporary examples of Religions versus Human Rights illustrate the perceived – and at times real – tensions between religions and rights over time. The traditional view seems to conceive religions and rights in a competition mode, aggravated through

\(^{38}\) Robbers (fn. 1).
\(^{41}\) Robbers (fn. 1).
“[h]istorical tragedies in the name of religion, political populism and doctrinal secularism”.42

There is a powerful image of this antagonistic view on the cover page of the civil society report “Drawing the Line: Tackling Tensions Between Religious Freedom and Equality”.43 The cover photo shows two divergent street signs, one pointing to “Religion”, while the other signpost leads to “Equality”. It seems as if these two goals were located at two different destinations and as if religious freedom and equality only intersect briefly at one point in the middle of the two street signs. While this photo is very effective in illustrating various human rights concerns, the very idea that this is a zero-sum game – in which the gain or loss of one side is exactly balanced by the losses or gains of the other side – is incorrect. Human rights are not a game, let alone a zero-sum game. Everyone gains, when there is greater fulfilment of human dignity. The attainment of equality for one group does not necessarily discriminate against other people.

Indeed, there is a need to counter the false dichotomy between equality and freedom of religion or belief. Individuals should not be expected to opt for only one of them and nobody should be assumed as faithless if they are pro-choice or defend the rights of lesbian, gay, bisexual, transgender or intersex persons.

What is needed is a holistic approach, which reconciles and harmonizes all human rights to the maximum extent on a case-by-case basis in order to bring all of them into “practical concordance”.44 There is also no abstract hierarchy of freedoms, rights and principles. Instead, as coined by the 1993 World Conference on Human Rights in Vienna, all human rights are universal, indivisible and interdependent and interrelated.45 High Commissioner for Human Rights Michelle Bachelet stressed the importance of governments, religious authorities and civil society actors working together to uphold human dignity and equality for all: “Human rights and faith are
not opposing forces – indeed, it is human interpretation that creates tensions.”

Both spheres of “Faith” and “Rights” have much to gain if the antagonistic view of Religions versus Human Rights ultimately moves towards a constructive Faith for Rights approach that respects the fundamental freedoms, equality and human dignity of everyone.