



Universiteit
Leiden
The Netherlands

Defaming the freedom of religion or belief: a historical and conceptual analysis of the United Nations

Schaik, B. van

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3 Freedom to Change Religion or Belief: a Right to Apostasy

3.1 Introduction

As discussed in the previous chapter, the Universal Declaration was adopted by the General Assembly to establish fundamental human rights. Although often disputed, the Universal Declaration is of considerable significance, and it imposes a moral obligation upon all participating states. It is also of importance as an (international) legal standard, as it is frequently used as a source for national constitutions, international treaties, and as an inspiration for human rights organisations. The Universal Declaration does not, however, impose a direct legal obligation on states to comply with its standards, this, as was described in Chapter 1, in contrast to the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.⁴⁵⁶ The articles in both covenants are mandatory, which means that they have a legally binding nature for states who have ratified them. In other words, the covenants are not self-executing. So far, 173 of the 193 states are party to the ICCPR and 171 to the ICESCR.⁴⁵⁷

Religious freedom is addressed in several articles of the covenants: Article 2 ICCPR prohibits religious discrimination while Article 18 ICCPR is devoted to the freedom of thought, conscience and religion, and more specifically to the right of parents to ensure the religious education of their children, which is also entrenched in Article 13 under 3 ICESCR. Article 20 ICCPR prohibits the incitement of hatred against other individuals based on religion, and Article 27 ICCPR protects individuals belonging to ethnic, religious, or linguistic minorities from being denied the enjoyment of their own culture, the profession and practise of their own religion, or the use of their own language. The focus in this chapter is on the main provision, Article 18 ICCPR.

It is thus clear that the ICCPR contains a variety of provisions regarding religious freedom. This variety of articles seems to imply that the freedom of religion or belief and its accompanying aspects are well protected. However, as the Pew figures (addressed in the Introduction to this study) demonstrate, several aspects of this freedom have often gone unrecognised within the actual state practices. Most contemporary legal systems state that they endorse the right to freedom of religion of religion or belief. However, there is evidence that the full exercise of that right meets with insurmountable difficulties. This assumption is specified in this chapter to the aspect of the *freedom to change religion or belief*, which is analysed from three perspectives. Furthermore, the implications of this for the universal status and content of the right are discussed.

Firstly, I analyse the current legal provisions and inquire into a literal interpretation of the entrenched rights. In other words, I examine the (exact) wording of the legal contours of the provisions. This analysis is particularly significant, for it demonstrates the scope of the freedom to change religion or belief. The views of some UN experts and the Human Rights Committee are also discussed. In order to properly understand and interpret the freedom to change religion, the

⁴⁵⁶ The draft of the ICCPR functioned as an inspiration for the European Convention, which in turn inspired the American Convention on Human Rights. J.P. Humphrey, 'Preface', in M.J. Bossuyt (ed.) *Guide to the "Travaux préparatoires" of the international covenant on civil and political rights*, Dordrecht, Martinus Nijhoff Publishers, 1989, p. XV.

⁴⁵⁷ States (18) that took no action: Bhutan, Brunei Darussalam, Cook Islands, Holy See, Kiribati, Malaysia, Micronesia, Myanmar, Niue, Oman, Saint Kitts and Nevis, Saudi Arabia, Singapore, Solomon Islands, South Sudan, Tonga, Tuvalu, and United Arab Emirates. Signatory states (6) but no ratification: China, Comoros, Cuba, Nauru, Palau, and Saint Lucia.

drafting history of Article 18 ICCPR is studied. This is the second perspective from which the freedom to change religion or belief is researched.

The legislative history of Article 18 ICCPR is of interest for the reason that the drafting parties had varying views about the scope and interpretations of several concepts of the provision. Due to the influence of a range of states, it was a complicated process to reach consensus on the various concepts and terminology, and it took nearly two decades. In this context, particular attention is given to the extent to which the freedom of religion or belief includes the right to *reject* a religion, which was sometimes absent in the conception of various delegates. In these considerations, the political strategies of the state representatives are also considered.

This legal historical analysis is imperative to understand and assess the current academic debates on the freedom to change religion or belief, which is the third perspective from which this topic is discussed. The stances of several renowned authors in academia about the freedom to change religion or belief are discussed, and I demonstrate that these conceptions seem to diverge.

The analyses from these three perspectives lead to the argument that, within the UN, member states have tried and succeeded to alter the provisions, resulting in conceptual ambiguity regarding the right to apostasy. I argue that it is a matter of concern that within the UN and in academia, there is no recognition of the fact that the explicit right to apostasy has been disregarded, resulting in a diminishment of the normative force of this essential element of the religious freedom provision.

In conclusion, I argue that conceptual clarity is needed. In order for the freedom of religion or belief to have a scope broad enough to include the freedom to change religion or belief, it must be explicitly formulated in the provision so that the risk of misinterpretation is minimized. This would mean that Article 18 ICCPR has to be reconceptualised; in this chapter, a suggestion to that effect is made. The chapter starts with an initial analysis of the freedom to change religion or belief: an examination of the legal documents.

3.2 Apostasy at the UN

The controversial issue of the right to change religion or belief, and whether this should be recognised in international standards, was a topic that was extensively discussed during the drafting of the Universal Declaration (1948), the ICCPR (1966), and the 1981 Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief.

What the right to change belief or religion adds to the general right of freedom of religion or belief is: (1) the right to adopt another religion or belief than the one which one has acquired from the parents or guardians; (2) the right to adopt another religion or belief than the one which was chosen initially by the believer himself; (3) the right to relinquish all religion. The last option means that the right to change religion or belief implies the option of *apostasy*.

Although there is no clear definition of apostasy, and within religions various definitions are used,⁴⁵⁸ in general terms it includes the (total) desertion of or departure from one's religion, principles, community, and cause.⁴⁵⁹ The Oxford dictionary adds to this 'the act of rejecting your

⁴⁵⁸ See for the usage of these various definitions D.G. Bromley, *The Politics of Religious Apostasy: The Role of Apostates in the Transformation of Religious Movements*, Westport, Praeger Publishers, 1998.

⁴⁵⁹ Encyclopædia Britannica, 'Apostasy', *Encyclopædia Britannica*, retrieved 25 May, 2020, [britannica.com](https://www.britannica.com).

former religious or political belief'.⁴⁶⁰ It is the act of refusing to continue to follow, obey, or recognise any religious faith or belief whatsoever.⁴⁶¹ For this reason, it is highly controversial. It is even more controversial when referred to as an actual right, which is the intention in this chapter.

The legal framework that was established regarding the freedom to change religion or belief at the UN is the following:

Article 18 Universal Declaration:

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.

Article 18 ICCPR:

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.
2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.
4. 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.

Article 1 1981 Declaration:

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.
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 beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others.

⁴⁶⁰ Oxford Advanced Learner's Dictionary, 'Apostasy', *Oxford Advanced Learner's Dictionary*, retrieved 22 October, 2020, [oxfordlearnersdictionaries.com](https://www.oxfordlearnersdictionaries.com).

⁴⁶¹ Merriam-Webster, 'Apostasy', *Merriam-Webster*, retrieved 25 May, 2020, [merriam-webster.com](https://www.merriam-webster.com).

A first glance makes it clear that on a *textual level*, the articles vary from each other in several respects. Over the years, textual changes have been implemented: Article 18 ICCPR differs from Article 18 Universal Declaration and the 1981 Declaration in at least three respects.

First, Article 18 ICCPR includes a paragraph that reads: ‘no one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice’. In addition, a third paragraph was added in which a limitation clause is adopted. This limitation clause was repeated in Article 1 of the 1981 Declaration fifteen years later. The aforementioned paragraph and limitation clause were, however, absent from the Universal Declaration. Instead, in the UDHR, a more general provision was adopted in Article 29 paragraph 2, which states that ‘[i]n the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society’, and in paragraph 3 ‘[t]hese rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations’. This means that in the following years, the general limitation clause as adopted in the UDHR was further specified in the ICCPR and 1981 Declaration.

Second, in Article 18 ICCPR, a new paragraph was inserted that grants parents or legal guardians the freedom to ensure the religious and moral education of their children in conformity with their own convictions. This paragraph was also adopted in an even more substantive manner in Article 5 of the subsequent 1981 Declaration.

Third is the point that is the main focus in this chapter: the changes in phrasing in the legal framework with regard to the freedom to change religion or belief. In Article 18 Universal Declaration, the phrase ‘this right includes freedom to change his religion or belief’ was included, whereas in Article 18 ICCPR, the words ‘the freedom to have or to adopt a religion or belief of his choice’ were adopted, and in Article 1 of the 1981 Declaration, the clause ‘freedom to have a religion or whatever belief of his choice’ was used.

These various *textual alterations* demonstrate that there is a change in phrasing from ‘to change religion or belief’ to ‘have or to adopt a religion or belief of choice’ to ‘religion or whatever belief of choice’. The textual changes indicate that the 1948 formula was not repeated in 1966 and 1981. As my upcoming analysis demonstrates, during the ICCPR drafting process, all references to the wording ‘to change religion or belief’, which were used in the Universal Declaration, were deleted in the end. A similar situation occurred during the preparations of the 1981 Declaration: the language of its predecessor, the 1966 Covenant, was only partially adopted, since the phrase ‘to adopt a religion’, which was used in the ICCPR, remained absent. In Article 6 of the 1981 Declaration, where the freedoms that are included in the general freedom of religion or belief are summed up, no references are made to the 1948 or 1966 formula. To accommodate the states that opposed this approach, Article 8 was introduced, which states that ‘[n]othing in the present Declaration shall be construed as restricting or derogating from any right defined in the Universal Declaration of Human Rights and the International Covenants on Human Rights’.

If these phrases were interpreted literally, the interpretation would be based exclusively on the literal meaning of the words themselves. The use of different phrasing would then suggest a

change in meaning.⁴⁶² The interesting question now arises whether the difference in wording implicates a difference in rights, or rather, is there a change in the *de jure* situation prevailing in the international legal order? If so, does the variety of phrases have *de facto* consequences for the implementation of the right? In other words, do these gradual textual changes have any legal or normative implications for the freedom of religion or belief and, more specifically, for the right to apostasy? In order to answer these questions, the following sections discuss three important UN reports in which the subject of the freedom to change religion or belief is addressed.

3.2.1 UN Reports: The Krishnaswami Study

In 1960, Arcot Krishnaswami, Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, with the authorization of the Commission on Human Rights and the Economic and Social Council, was responsible for the *Study of Discrimination in the Matter of Religious Rights and Practices*, generally known as the *Krishnaswami Study*. In this study, Krishnaswami, inter alia, addresses the topic of changing religion or belief and writes that

[t]he freedom to maintain or to change religion or belief falls primarily within the domain of the inner faith and conscience of an individual. Viewed from this angle, one would assume that any intervention from outside is not only illegitimate but impossible. None the less, problems do arise and there are even today cases of interference with this freedom—or at least with its outward aspects. In order to understand this apparent contradiction, it must be recollected that the followers of most religions and beliefs are members of some form of organization, such as a church or a community. If it is to be considered that freedom to maintain or to change religion or belief does not admit of any restraint—and it seems to be so rightly considered by the consensus of world opinion—any instance of compelling an individual to join or of preventing him from leaving the organization of a religion or a belief in which he has no faith must be considered to be an infringement of the right to freedom of thought, conscience and religion.⁴⁶³

Krishnaswami furthermore notes that '[...] it must none the less be pointed out that the consensus of world opinion, as expressed in the Universal Declaration of Human Rights, is unequivocally in favour of permitting an individual not only to maintain but also to change his religion or belief in accordance with his convictions'.⁴⁶⁴ Moreover, Krishnaswami argues that '[t]he same idea is also brought out succinctly in Article 18 of the draft covenant on civil and political rights'.⁴⁶⁵

From this, it can be inferred that Krishnaswami was of the opinion that, in the 1960s, the general view during the drafting of the ICCPR was supportive of permitting an individual to

⁴⁶² A.J. Kwak (Ed.), *Holy Writ: Interpretation in Law and Religion*, Farnham, Ashgate, 2009; A. Scalia & B.A. Garner, *Reading Law: The Interpretation of Legal Texts*, St. Paul, Thomson/West, 2012.

⁴⁶³ A. Krishnaswami, 'The Study of Discrimination in the Matter of Religious Rights and Practices', *E/CN.4/Sub.2/200/Rev.1*, New York 1960, p. 16.

⁴⁶⁴ Krishnaswami, 'The Study of Discrimination in the Matter of Religious Rights and Practices', *E/CN.4/Sub.2/200/Rev.1*, New York 1960, p. 25.

⁴⁶⁵ Krishnaswami, 'The Study of Discrimination in the Matter of Religious Rights and Practices', *E/CN.4/Sub.2/200/Rev.1*, New York 1960, p. 26.

maintain or change religion or belief. The ICCPR was still being drafted at that time, which means that it is fair to say that the UN rapporteur did not know what the actual final text of the provision would be. However, Krishnaswami could have taken into account that several countries were already offering significant resistance during the drafting process of the ICCPR to the use of the concept of ‘change’, just as had been the case during the drafting of Article 18 of the Universal Declaration.

3.2.2 The Odio Benito Report

In 1987, Elizabeth Odio Benito, the former Special Rapporteur on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief, wrote the annual report *Study on the Current Dimensions of the Problems of Intolerance and Discrimination on Grounds of Religion or Belief*, also known as the *Odio Benito Report*. In it, she elaborates on Article 18 Universal Declaration, Article 18 ICCPR, and the 1981 Declaration. One of the conclusions that she draws concerning the freedom to change religion or belief in the provisions is

that although they varied slightly in wording, all meant precisely the same thing, that everyone has the right to leave one religion or belief and to adopt another, or to remain without any at all. This meaning [...] is implicit in the concept of the right to freedom of thought, conscience, religion and belief, regardless of how that concept is presented.⁴⁶⁶

With regard to Article 6 of the 1981 Declaration, Odio Benito further elaborates on this view, pointing out that, although it does not explicitly mention the freedom to change religion or belief

[n]evertheless, [...] this freedom is expressly recognized in Article 18 of the Universal Declaration of Human Rights and in Article 18 of the International Covenant on Civil and Political Rights. In addition, Article 1 of the Declaration on the Elimination of All Forms Intolerance and of Discrimination Based on Religion or Belief states that the right to freedom of thought, conscience and religion included the freedom of everyone ‘to have a religion or whatever belief of his choice’. All this implies is that the 1981 Declaration, without repeating the Universal Declaration or the International Covenant word for word, encompasses the right to change one’s religion or belief and to adopt another or to have none at all.⁴⁶⁷

Thus, years after the adoption of the ICCPR and the 1981 Declaration, the UN rapporteurs were of the opinion that, regardless of the variances in wording between Article 18 Universal Declaration and Article 18 ICCPR, both provisions offered the same rights, meaning that every individual has the right to leave, change, or adopt a (different) belief, or to remain without any belief at all, even if some of these rights are not explicitly mentioned in the legal documents.

⁴⁶⁶ E. Odio Benito, ‘Study on the current dimensions of the problems of intolerance and discrimination on grounds of religion or belief’, *E/CN.4/Sub.2/1987/26*, 1987, p. 4.

⁴⁶⁷ Para. 200-201 of Odio Benito, ‘Study on the current dimensions of the problems of intolerance and discrimination on grounds of religion or belief’, *E/CN.4/Sub.2/1987/26*, 1987, p. 50.

3.2.3 General Comment 22

In 1993, the UN Human Rights Committee addressed the issue of freedom of religion or belief. As was explained in Chapter 1, the Human Rights Committee elaborated on Article 18 ICCPR in eleven paragraphs in General Comment 22.⁴⁶⁸ With regard to this subject, it states that Article 18 ICCPR protects theistic, non-theistic, and atheistic beliefs, as well as the freedom not to profess any religion or belief.⁴⁶⁹ It also explicates that ‘[i]t does not permit any limitations whatsoever on the freedom of thought and conscience or on the freedom to have or adopt a religion or belief of one’s choice’.⁴⁷⁰

Paragraph 5 engages this topic explicitly and explains that ‘[...] the freedom to “have or to adopt” a religion or belief necessarily entails the freedom to choose a religion or belief, including the right to replace one’s current religion or belief with another or to adopt atheistic views, as well as the right to retain one’s religion or belief’.⁴⁷¹ Additionally, it elucidates that Article 18 paragraph 2 ‘bars coercion that would impair the right to have or adopt a religion or belief, including the use of threat of physical force or penal sanctions to compel believers or non-believers to adhere to their religious beliefs and congregations, to recant their religion or belief or to convert’.⁴⁷²

An analysis of General Comment 22 demonstrates that a few things stand out on this topic. First, the Comment is of crucial importance, since it reaffirms the pleas for the recognition of freethought during the discussion in the early days of the Universal Declaration explicitly voiced by Karapandza, the Yugoslav delegate, and repeated by USSR representatives Bogomolov and Pavlov. Second, it is indicated clearly that the right to apostasy is protected, since it includes the right to replace one’s current religion or belief with another or to adopt atheistic views. It is remarkable, however, that in the overall text, the concept of ‘change’ is not used once; the wording of the Universal Declaration is thus set aside. The third point is that the wording of the ICCPR is used rather than the language of the later 1981 Declaration. Instead of ‘this right shall include freedom to have a religion or whatever belief of his choice’, the phrase ‘the freedom to have or adopt a religion or belief of one’s choice’ is used, meaning that there is a *reintroduction* of the concept of ‘adopt’, which was essentially absent in the 1981 Declaration.

3.2.4 An implicit Recognition

On the basis of the examination of these UN documents, drafted by UN rapporteurs and the Human Rights Committee, it can be inferred that the experts seem to recognise an overall right to change religion or belief, or rather, alongside the right to proselytise and the right to atheism, they recognise the right to apostasy.

Within UN institutions, it seems fair to say that there is an understanding that Article 18 ICCPR and the 1981 Declaration *implicitly* include the right to change religion or belief, even though

⁴⁶⁸ Human Rights Committee, General Comment 22 (48), Article 18, ICCPR/C/21/Rev.1/Add.4 (30 July 1993).

⁴⁶⁹ Human Rights Committee, General Comment 22 (48), Article 18, ICCPR/C/21/Rev.1/Add.4 (30 July 1993), para. 2.

⁴⁷⁰ UNHRC, ICCPR *General Comment No. 22: Article 18 (Freedom of Thought, Conscience or Religion)*, 30 July 1993, ICCPR/C/21/Rev.1/Add.4, para. 3.

⁴⁷¹ UNHRC, ICCPR *General Comment No. 22: Article 18 (Freedom of Thought, Conscience or Religion)*, 30 July 1993, ICCPR/C/21/Rev.1/Add.4, para. 5.

⁴⁷² UNHRC, ICCPR *General Comment No. 22: Article 18 (Freedom of Thought, Conscience or Religion)*, 30 July 1993, ICCPR/C/21/Rev.1/Add.4, para. 5.

the textual varieties in the actual legal framework show apparent differences compared to the Universal Declaration. These UN experts seem to imply that agreement as to the meaning, or rather the implications of the varying concepts of ‘change’, ‘adopt’, and ‘choice’, is not essential to the consistency of the law. According to the experts, there is no a difference in *de jure* situation in the international order, which implies that there also should not be any *de facto* consequences for the actual application or implementation of the right. To substantiate this view, the UN rapporteurs seem to extensively interpret the international standards, to have a scope broad enough to encompass the right to apostasy. It may be questioned if the rapporteurs were striving to interpret the provision in its best possible light.⁴⁷³ However, by implying that these concepts all mean the same thing, the rapporteurs may unwittingly have stifled discussion about this matter while the concepts are, in fact, the subject of a material and essential difference of opinion.

On the basis of this textual analysis, it is clear that there was a textual change in defining the right to change religion or belief. This is apparent from the alteration of the words in ‘to have and adopt’ and the use of the concept of ‘choice’. Considering the adjustment of these phrasings, it may be said that there is a decline from an *explicit* recognition of the right to a sort of *implicit* recognition. However, according to the rapporteurs, the Universal Declaration, the ICCPR, and the 1981 Declaration all embody the freedom to change religion or belief, even though the language of the Universal Declaration is not repeated. Does this mean that the legal concepts do not have to be repeated to be legally valid? Does interpretation suffice? Here we seem to arrive at a general reflection on ‘what the law is’. Is it the text as it has been formulated by the lawgiver? Or is it the text drafted by the lawgiver and the interpretation by the legal experts?

In this situation, it may even seem that the UN rapporteurs were trying to save what is possible of the text from 1948. From a strategic and political point of view, that is perhaps the appropriate approach, but from a human rights perspective, it is lamentable that the text of 1966 and 1981 has become what it is today. I elucidate this point from section 3.7 onwards.

So, within UN circles, the prevailing view is still that Article 18 ICCPR includes the right to apostasy, but, as I demonstrate in the subsequent sections, it may be argued that the evidence for this stance is not completely convincing. Agreement as to the meaning of the clauses ‘to have or adopt a religion or belief of choice’ and ‘to change religion and belief’ is imperative to understand and assess this assumption. Therefore, the legislative history is studied and discussed in the following sections. This is useful in clarifying the motivations of the drafters of the ICCPR for changing the concepts. Perhaps the drafters intentionally changed the wording in the provisions in order to assert different normative contours. This is the second perspective from which I examine the freedom to change religion or belief.

3.3 Drafting Article 18 ICCPR

The discussion as it took place in the Commission on Human Rights is reminiscent of the one held during the drafting of the Universal Declaration, which has been extensively discussed in the previous chapter, so it is not discussed in detail here. The debate on Article 18 ICCPR in the

⁴⁷³ Dworkin has provided insights into the nature of interpretation. Dworkin, 2013. For a critical assessment of this work see A. Marmor, *Interpretation and Legal Theory*, Oxford/Portland, Hart Publishing, 2005. See also Kwak (Ed.), 2009; Scalia & Garner, 2012.

Commission on Human Rights seemed to focus on three main issues: the nature or concept of ‘freedom of thought, conscience and religion’, the right ‘to change or maintain’ one’s religion or belief, and the scope of legitimate limitations to ‘freedom to manifest one’s religion or belief’.⁴⁷⁴

The scope of the concepts of ‘religion’ and ‘belief’ was a central issue during the debates in the Commission on Human Rights.⁴⁷⁵ The Commission decided that the

[...] freedom of thought, conscience and religion was frequently characterized as ‘absolute’, ‘sacred’ and ‘inviolable’. The first clause of the article accordingly declared in clear and simple terms, and without qualifications, that ‘everyone shall have the right to freedom of thought, conscience and religion’. No restrictions of a legal character, it was generally agreed, could be imposed upon man’s inner thought or moral consciousness, or his attitude towards the universe or its creator; only external manifestations of religion or belief might be subject to legitimate limitations.⁴⁷⁶

The question if there was a difference between the concepts of ‘thought’ and ‘belief’ was also addressed.⁴⁷⁷ In addition, the difference between ‘the right to freedom of thought’ and ‘the right to hold opinions without interference’, which was entrenched in another provision, was also debated.⁴⁷⁸ These discussions were repeated in more detail in the Third Committee and are more valuable to examine for that reason. However, three changes were adopted by the Commission on Human Rights to draft Article 18 ICCPR that had consequences for the subsequent debate in the Third Committee.

The first change was made within the context on the debate on proselytism, more specifically on the possible coercion of an individual to change religion. At the insistence of the Egyptian and Lebanese delegations, a compromise was made which consisted of the insertion of the words ‘to maintain’ alongside the words ‘to change’ in Article 18 ICCPR.⁴⁷⁹ The suggested change was adopted unanimously.⁴⁸⁰ The second change was that a second paragraph was added to the provision that stated that ‘no one shall be subject to coercion which would impair his freedom to maintain or to change his religion or belief’. The concept of ‘coercion’ was interpreted as not including ‘moral or intellectual persuasion’, or ‘any other legitimate limitation of freedom to manifest one’s religion or belief’.⁴⁸¹ The third change was the introduction of the limitation clause in the third paragraph of the provision.⁴⁸² The Commission on Human Rights adopted Article 18

⁴⁷⁴ A/2929, Chapter VI, p. 136-143.

⁴⁷⁵ For instance: E/CN.4/AC.1/SR.10; E/CN.4/AC.3/SR.5; E/CN.4/AC.1/SR.26; E/CN.4/SR.37; E/CN.4/SR.116; E/CN.4/SR.117; E/CN.4/SR.119; E/CN.4/SR.160; E/CN.4/SR.161; E/AC.7/SR.147; E/AC.7/SR.148; E/CN.4/SR.319.

⁴⁷⁶ A/2929, Chapter VI, para. 106.

⁴⁷⁷ A/2929, Chapter VI, para. 107.

⁴⁷⁸ A/2929, Chapter VI, para. 107.

⁴⁷⁹ E/CN.4/L.187, E/CN.4/SR.319, p. 3. The amendment was introduced by Azmi Bey, the Egyptian representative.

⁴⁸⁰ E/CN.4/SR.319, p. 13.

⁴⁸¹ A/2929, Chapter VI, para. 110.

⁴⁸² A/2929, Chapter VI, para. 112-114.

paragraph 1 unanimously, paragraph 2 unanimously, and the article as a whole unanimously.⁴⁸³ The draft of Article 18 that was finally introduced to the Third Committee read:

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.
2. No one shall be subject to coercion which would impair his freedom to maintain or to change his religion or belief.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect safety, order, health, or morals or the fundamental rights and freedoms of others.⁴⁸⁴

The Third Committee discussed draft Article 18 ICCPR at various successive meetings.⁴⁸⁵ The article again gave rise to debate and several amendments were submitted, inter alia, by Greece,⁴⁸⁶ Saudi Arabia,⁴⁸⁷ Brazil, and the Philippines.⁴⁸⁸ The latter three amendments are relevant for present purposes.

3.4 The Saudi Proposal: Delete 'to Maintain or Change Religion'

In the Third Committee, the right to change religion was one of the main topics discussed. As was demonstrated in the previous chapter, discussions about this topic had also dominated the Third Committee during the drafting of the Universal Declaration more than a decade ago. It was again Saudi Arabia that introduced the subject and strongly contested the suggestions of the Commission on Human Rights.⁴⁸⁹ The Saudi Arabian amendment, which was only formally introduced later in the discussions, proposed to delete the words 'to maintain or to change his religion or belief, and freedom' in paragraph 1, and to change paragraph 2 of Article 18 ICCPR to the following: 'No one shall be subject to coercion which would deprive him of his right to freedom of religion or belief'.⁴⁹⁰ With this change, the right of the individual to maintain religion or belief and the right to apostatize

⁴⁸³ E/2573, annex B.

⁴⁸⁴ E/2573, annex I B.

⁴⁸⁵ From its 1021st till its 1027th meeting. See A/4625, fifteenth session, agenda item 34, U.N. Doc. A/4625 para. 43.

⁴⁸⁶ A/C.3/L.875.

⁴⁸⁷ A/C.3/L.876.

⁴⁸⁸ A/C.3/L.877.

⁴⁸⁹ Chapter 2 also described that Article 18 UNUDHR was not adopted without resistance. Especially Saudi Arabia did not comply with the words 'freedom to change religion or belief', and the adoption of these words were reason for the Saudi Arabian delegation to abstain from the final vote to adopt the Universal Declaration

⁴⁹⁰ A/C.3/L.876; A/C.3/SR.1021, para. 15, See Official Records of the General Assembly, Tenth Session, Annexes, agenda item 28 (part 1); A/C.3/L.460, p. 11; A/2808, para. 45. Report of the Third Committee, Ninth Session Agenda item 58, 29 November, 1954. The amendment was first introduced with A/C.3/L.422. A/C.3/SR.1023, para. 11. During this meeting, Baroody formally introduced his suggestions by introducing amendment A/C.3/L.876.

was deleted in both paragraphs of the provision.⁴⁹¹ It was suggested that the provision be changed into:

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.
2. No one shall be subject to coercion which would deprive him of his right to freedom of religion or belief.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect safety, order, health, or morals or the fundamental rights and freedoms of others.⁴⁹²

The amendment was introduced and explained by representative Baroody. This was the same Saudi Arabian delegate as during the drafting process of the Universal Declaration. When the discussions regarding Article 18 ICCPR in the Third Committee started, Baroody was the first to speak, making a preliminary statement. He began by expressing the similarities and differences between Article 18 Universal Declaration and Article 18 ICCPR. Baroody said that '[w]hile the two articles were very similar in substance, there was a difference between them. Article 18 of the Universal Declaration referred only to the individual's freedom "to change his religion or belief"'.⁴⁹³ Baroody highlighted that during the drafting of the Universal Declaration, Saudi Arabia had opposed the inclusion of those words. The phrase 'to maintain or to change his religion or belief' in the draft covenant 'had been meant to meet his delegation's point of view'.⁴⁹⁴ Meaning that his fellow delegates on the Commission on Human Rights had already tried to satisfy the Saudi Arabian delegation (and the Egyptian and Lebanese delegations, which also insisted on this change) by inserting the words 'to maintain' and reach a consensus. Baroody, however, was still not content with the phrasing of the provision.

Baroody repeated the words of the Commission on Human Rights, which had indicated that the freedom of thought, conscience, and religion were absolute, sacred, and inviolable.⁴⁹⁵ He found it 'important to note that those terms had been used in connection with all three elements, and not with religion alone. His delegation felt that the article should not be regarded, as there had been a tendency to do, as one on religion; as the article's first sentence indicated, the three freedoms mentioned were of equal value'.⁴⁹⁶ As a result, in his preliminary statement Baroody focussed on the supposedly unequal emphasis in the article. In a later meeting, he said that if the article were to be adopted as drafted by the Commission on Human Rights, it would give the impression that the

⁴⁹¹ A/4625, para 48.

⁴⁹² E/2573, annex I B.

⁴⁹³ A/C.3/SR.1021, para. 7.

⁴⁹⁴ A/C.3/SR.1021, para. 7.

⁴⁹⁵ A/C.3/SR.1021, para. 8.

⁴⁹⁶ A/C.3/SR.1021, para. 8.

authors had intentionally emphasised religion. Additionally, he argued that it could lead to ‘discrimination in favour of religions possessing highly organized proselytizing institutions’.⁴⁹⁷

Baroody continued that ‘[t]here could be no compulsion to believe, and religion was an entirely personal matter. It was wrong, therefore, to do any more than enunciate the right to freedom of religion; the emphasis laid on the right to change one’s religion was totally unjustified’.⁴⁹⁸ Baroody highlighted the fact that some religions had more active missionary activities than others. There was the risk of states with proselytising state religions, strengthened by mass media, to influence the thoughts of people of different religions.⁴⁹⁹ He proceeded to underline the fact that there was no such thing as a right to proselytise and warned that the Third Committee should not ‘lend itself to such practices’.⁵⁰⁰ Baroody argued that the focus should not be on the fact that only religion could be changed, for this was also the case for thought and conscience. He saw no justification for both religious proselytism and ideological proselytism, and said that ‘[t]o give the sanction of the Covenants to ideological proselytizing in foreign countries might well bring about the disruption of the social order’.⁵⁰¹

It is important to note that this discussion has to be viewed in the context of the age of Christian colonialism. There was worldwide resentment of Christian proselytising practises, and the mere act of proselytism was seen as a threat. In general terms, the act of proselytism means to convert or attempt to convert an individual from one religion, belief, or opinion to another. Interestingly, Muslims were not nearly as well organised in this respect as Christians at that time. In recent decades, however, there have been various developments that changed this balance, and now there are various organisations that strive to be the ‘collective voice of the Muslim world’. This topic is discussed in more detail in Chapter 4. Another consideration which has to be taken into account is that apostasy is controversial within Islam, but I will return to this point in section 3.7 and subsequent sections.

Considering these remarks, it is clear that Baroody resisted the idea of proselytism in general. More specifically, the impression is given, with Christian colonialism in mind, that Baroody was actually referring to (Christian) missionary work. It seems that Baroody wanted to counter Christian missionaries who could interfere with the Saudi Arabian state religion.

Baroody closed his preliminary statement by noting that he wished to hear the reactions of his fellow delegates.⁵⁰² Two meetings later, Baroody submitted his (preliminary) statements as formal amendments. In his formal amendments, he explained his motivations in more detail, noting that he held the ‘firm conviction’ that a reference to the freedom to maintain or change religion was ‘superfluous’.⁵⁰³ He said that ‘[t]he new text, while detracting nothing from the statement of the freedom, would allow for every possibility—the right to maintain or change one’s religion, the right to doubt, question, return to one’s former religion, and so on. All those were emotional states which were not covered by the words “to maintain or to change”’.⁵⁰⁴

⁴⁹⁷ A/C.3/SR.1023, para. 11.

⁴⁹⁸ A/C.3/SR.1021, para. 11.

⁴⁹⁹ A/C.3/SR.1021, para. 11.

⁵⁰⁰ A/C.3/SR.1021, para. 11.

⁵⁰¹ A/C.3/SR.1021, para. 11.

⁵⁰² A/C.3/SR.1021, para. 15.

⁵⁰³ A/C.3/SR.1023, para. 12.

⁵⁰⁴ A/C.3/SR.1023, para. 12.

This last remark is interesting, for it can be interpreted as Baroody implying that an *explicit* reference does not have to be made to the freedom to maintain or change religion for the reason that it is already *implicitly* included in the first part of the sentence. Although several delegates shared this view, there were also delegations who adopted a different stance. For conceptual clarity, I have divided this view into an implicit and explicit adoption of the right to apostasy in the freedom of religion or belief provision. I elucidate this in the following sections.

3.4.1 An Implicit Reference to Apostasy

The arguments of the representatives that adopted the first line of reasoning, *viz.*, that no *explicit* reference to the individual's freedom to maintain or change religion should be made, varied. There were representatives that agreed with Baroody's line of reasoning, such as the Ghanaian representative, Dadzie, who thought 'the article could do more justice to the multifarious shades of religions and beliefs represented in the world by protecting freedom of religion in general terms'.⁵⁰⁵ Mantzoulinos, who represented Greece, adopted a similar stance and noted that '[t]he right proclaimed in that first sentence, in a categoric, definite and positive formulation, was obviously bound to imply the right to maintain or change one's religion or one's belief. That last clarification was superfluous and could only weaken the strength of the preceding statement'.⁵⁰⁶ The Canadian representative, Steen, argued that '[...] her delegation held that freedom of religion involved the right to maintain or to change one's religion whether the right was spelled out or not'.⁵⁰⁷

These responses seem to imply that the representatives who did not favour an explicit mention of the rights to maintain or change religion were not actually against the *rationale* or the existence of the right to apostasy, but held the view that the right was implicitly included in the first sentence. An enumeration of it was more or less viewed as a *redundant* addition.

3.4.2 An Explicit Reference to Apostasy

There were also delegations that opposed Baroody's amendment with different arguments. Representative Lopez from the Philippines argued that if the phrase was deleted, the 'freedom of thought and of conscience would no longer be safeguarded for non-conformists'.⁵⁰⁸ The Dutch representative, Boersma, said that 'Article 18 also contained a legal check against excessive manifestations of religious proselytism, in that all attempts on the part of believers and churches alike to promulgate certain religious beliefs were subject to the limitation that they must not encroach upon freedom of thought in any manner contrary to the spirit of the article'.⁵⁰⁹

The representative of Liberia, Dennis, pointed out that 'a man who could not change his religion in fact had a religion imposed on him'.⁵¹⁰ He furthermore explained that '[t]he essential point was not the religion a man chose, but his freedom to choose any religion he wished. That

⁵⁰⁵ A/C.3/SR.1025, para. 17.

⁵⁰⁶ A/C.3/SR.1022, para. 1.

⁵⁰⁷ A/C.3/SR.1024, para. 2.

⁵⁰⁸ A/C.3/SR.1022, para. 11.

⁵⁰⁹ A/C.3/SR.1025, para. 41.

⁵¹⁰ A/C.3/SR.1024, para. 7.

freedom automatically supposed another, the freedom to change his religion, even if the tenets of his original religion forbade such a change. That very important right was spelled out in the second sentence of paragraph 1, which could not, therefore, be considered redundant'.⁵¹¹ The representative of Yugoslavia, Karapandza, argued that if the delegations thought the right was implicit in the first part of the provision, there was no actual reason for it not to appear in the provision. He also emphasised that all representatives had stated that their 'respective religions allowed for such change'.⁵¹²

The stance of the Pakistani delegate, Begum Aziz Ahmed, is also interesting, considering the country's change of course in 1977 after Zia-ul-Haq's military coup. Begum Aziz Ahmed was one of the representatives who fiercely advocated for a broad conception of freedom of thought, conscience, and religion, and noted: 'Nothing could be lost by elaboration, but something could be lost by failure to elaborate [...]'.⁵¹³ The French representative, Bouquin, indicated that the adoption of the Saudi Arabian amendments would result in 'rendering a very important article meaningless'.⁵¹⁴ He was also one of the delegates who explicitly referred to the *Study of Discrimination in the Matter of Religious Rights and Practices*. In this study, which was drafted by Krishnaswami, one of the essential rules was that the freedoms to maintain or change religion were fundamental rights.⁵¹⁵ Bouquin also emphasised the importance of Article 18 Universal Declaration and underlined the similarities between the two articles. He made clear that '[...] the arguments adduced were not sufficient to justify any drastic change in the wording adopted in the [Universal Declaration] [...]'.⁵¹⁶ Delegate Perera from Ceylon (Sri Lanka prior to 1972) noted that the explicit mention in Article 18 of the Declaration 'made it necessary to consider very carefully before accepting an amendment to delete it'.⁵¹⁷

More arguments were brought forward. The United States representative, Lamey, said that '[...] it was sometimes advisable to spell out such a right in language which could not be misunderstood, rather than to leave its consequences to be inferred'.⁵¹⁸ The Israeli delegate, Eshel, offered an argument of a similar nature and commented that '[...] brevity was not a desirable aim, unless it made for clarity. The draft Covenant, as a legally binding instrument, should be both clear and explicit'.⁵¹⁹ The delegate of Cuba, Griñan, offered an argument of a more social nature and noted that '[i]n view of the social evolution in the overwhelming majority of countries, it was proper to give explicit recognition to everyone's right to maintain or to change his religion'.⁵²⁰

In sum, from these views it can be concluded that the freedom to change and maintain religion was to be seen as a corollary of the freedom of religion or belief, and if it was not explicitly mentioned, the possibility would arise that the provision could be misinterpreted or arbitrarily

⁵¹¹ A/C.3/SR.1023, para. 8.

⁵¹² A/C.3/SR.1027, para. 23. The Philippian representative, Lopez, made a similar argument.

⁵¹³ A/C.3/SR.1024, para. 23.

⁵¹⁴ A/C.3/SR.1026, para. 6.

⁵¹⁵ A/C.3/SR.1026, para. 6.

⁵¹⁶ A/C.3/SR.1026, para. 6.

⁵¹⁷ A/C.3/SR.1022, para. 4-5, 19.

⁵¹⁸ A/C.3/SR.1027, para. 19.

⁵¹⁹ A/C.3/SR.1025, para. 45.

⁵²⁰ A/C.3/SR.1026, para. 9.

applied. Moreover, it would be a deviation from the text of the Universal Declaration, which the delegates thought was undesirable.

What is relevant in this regard is that the debate also has to be placed within the context of social reality. The delegates rightfully pontificated on the meaning of concepts, but one wonders if they were aware of the precarious situations of apostates in, for instance, significant parts of the Middle East. In Saudi Arabia—Baroody's country—people received the death sentence (and still do) for changing their belief.⁵²¹ Evidently, they could not have openly said this in a UN gathering, perhaps because that would have stood in the way of a fruitful discussion. But it is remarkable that none of the delegates made even a passing reference to this. From the examination of the debates, the impression may even arise that the representatives were, in some cases, avoiding making any reference to the infringements of religious freedom committed by other states.⁵²²

3.4.3 Emphasising Religion

The delegates reacted to Baroody's arguments, and the Brazilian delegate, Lima, again supported his views. Lima said that the reference to the freedom to maintain or change religion or belief '[...] was essentially a subjective aspect of freedom, and therefore was by its very nature outside the scope of legal sanction'. He continued:

Accordingly, while it was right that the State should safeguard religious freedom, it was undesirable that Article 18 of the draft Covenant should place such legal emphasis on the freedom to maintain or to change one's religion; it might, under certain circumstances, be interpreted as favouring missionary campaigns of conversion, so that States with an official religion would find difficulties in accepting what might be interpreted as an appeal or an incentive to their citizens to change their religion.⁵²³

The first part of Lima's argument, in which he focusses on the supposed subjective part of freedom, is interesting. It seems that Lima is referring to the distinction that there are concrete actions and facts on the one hand and subjective thoughts and beliefs on the other. Lima refers to a legally relevant idea. Law is generally about concrete actions (that is, facts) and not about ideas or

⁵²¹ The state religion in Saudi Arabia is Wahhabism, a fundamentalist movement within Sunni Islam. Saudi Arabia is known as the centre of Islam, and Saudi Arabian citizens have virtually no religious freedom. Non-Islamic religions are tolerated only indoors (mainly among foreigners), and on the condition that they do not try to convert Muslims. This was already the case in the period in which the discussions regarding the ICCPR took place. According to the annual Freedom of Thought report by the International Humanist and Ethical Union, 12 countries (Afghanistan, Iran, Malaysia, Maldives, Mauritania, Nigeria, Qatar, Saudi Arabia, Somalia, Sudan, United Arab Emirates, and Yemen) impose the death penalty for apostasy. Pakistan does not officially have the death penalty for apostasy, but it does for blasphemy. The burden of proof to be convicted for the crime of blasphemy is very low and various actions, often including atheism and apostasy, are considered to be blasphemous. See: International Humanist and Ethical Union, 'Freedom of Thought Report 2017. A Global Report on the Rights, Legal Status and Discrimination Against Humanists, Atheists and the Non-religious', *International Humanist and Ethical Union*, fot.humanists.international, p. 18.

⁵²² Information was available, for example: S.M. Zwemer, *The Law of Apostasy in Islam: Answering the Question why There are so Few Moslem Converts, and Giving Examples of Their Moral Courage and Martyrdom*, London, Edinburgh & New York, Marshall Brothers, 1924.

⁵²³ A/C.3/SR.1023, para. 16.

moral and religious thoughts (assuming that they are not expressed). This is an important distinction that serves both freedom and the objectivity of legal judgement. How does one objectively prove what somebody thinks or believes? The distinction was devised by Kant, among others. In Dutch, it is expressed as ‘thoughts are free’. Consider also the Thought Police (Thinkpol), the secret police of the superstate Oceania in Orwell’s 1984, which unfortunately became a reality in the communist totalitarian states, among others.

However, what Lima does not seem to consider is that the suggested provision aims to protect two spheres of religious freedom, *viz.* the *forum internum* and the *forum externum*. The former aims to protect the inner dimension of an individual’s thoughts and convictions (religious or otherwise), and according to the suggested legal text in the provision, this protection is unconditional. Moreover, the function of this freedom is that it protects every individual’s inner faculty of forming, maintaining, and changing conscientious positions or religions and non-religious convictions against coercion and interference. The *forum externum*, thus the freedom to manifest religious manifestations, such as observances, practices, and teaching, may be subjected to limitations. Thus, qualifying the freedom to maintain or change religion as a subjective aspect of religious freedom seems accurate, but implying that it therefore falls outside of the legal scope of the article is incorrect.

As to the second part of Lima’s assumption, which Baroody in essence also makes, that by placing ‘legal emphasis on the freedom to maintain or to change one’s religion; it might, under certain circumstances, be interpreted as favouring missionary campaigns of conversion, so that States with an official religion would find difficulties in accepting what might be interpreted as an appeal or an incentive to their citizens to change their religion’, a critical comment must be made. Both delegates put too much emphasis on the state as an actual actor that can invoke the freedom of religion or belief.

On the one hand, Article 18 ICCPR does not provide insight into the type of relationship that a state must enter into regarding religion and belief. On the other hand, it does impose an obligation on the state that religion and belief must be impartially guaranteed for all individuals and groups under its jurisdiction. The fact that there is a (formal) state religion or that its supporters constitute the majority of the population should not infringe on the enjoyment of the rights under Article 18 ICCPR or lead to discrimination against supporters of minority religions or non-believers. This includes both negative obligations, such as the abandonment of discriminatory and exclusive acts, and positive obligations, such as the state obligation to offer protection against infringements of their rights by third parties. The fact that states with an official religion might have difficulties in maintaining the status quo with regard to the number of their adherents or their religious influence is irrelevant to the state’s obligation to protect the right to freedom of religion or belief for every individual.

The representative of Afghanistan, Farhadi, brought an argument similar to Lima’s to the fore. According to Farhadi

Article 18 began by stating a theoretical principle, the practical aspects of which were then described and explained. His delegation, while admitting the possibility of an interpretation on the practical level (freedom of worship), wondered whether an interpretation of the

principle in question on the theoretical level was really appropriate or whether it might not rather run counter to the objectives sought.⁵²⁴

Farhadi elucidated and claimed '[...] the enumeration in paragraph 1 of the various possibilities open to the individual in a matter as intimate and subjective as that of personal conviction was far from being exhaustive'.⁵²⁵ The question, however, of whether or not this enumeration is exhaustive does not contradict that it is essential that certain rights or facets of the freedom of religion or belief are explicitly mentioned and thus unquestionably enjoy protection.

Farhadi continued by saying that his delegation would support the amendment for '[i]t might also be asked what was meant by the word "religion" in the phrase "freedom to maintain or to change his religion or belief"'.⁵²⁶ He clarified this by stating that '[t]o a Muslim, a Catholic and a Protestant belonged to the same religion, whereas a Protestant frequently felt that his religion was different from that of a Catholic'.⁵²⁷

To be fair, the difficulty in defining religion is precisely what has often haunted the legal definition of the freedom of religion since its establishment. One of the reasons why blasphemy was deleted from the Dutch Criminal Code was that it proved to be impossible to distinguish religious beliefs from non-religious beliefs, so it was decided that personal dignity, not religious ideas or symbols, is protected by law. This will be discussed in Chapter 5.

3.4.4 Freedom to Proselytise

It was frequently expressed, especially by Baroody, Lima, and Farhadi, that there was a fear of misuse of Article 18 ICCPR by religions who emphasised the importance of missionary activities and proselytising activities. However, there were also counterarguments made against the so-called 'compulsion to believe' to which Baroody referred. The idea that the words to 'maintain or to change religion or belief' implied a compulsion to believe was, in their opinion, incorrect, and they explained what they understood as proselytism.

Sir Samuel Hoare, the representative of the UK, noted in this context that '[i]t might be rightly considered that the right set forth in the first sentence of that paragraph necessarily implied the freedom to maintain or to change one's religion or belief and even the freedom to manifest one's religion or belief',⁵²⁸ but the 'the freedom to manifest one's religion or belief was a particularly important aspect of the right to freedom of thought, conscience and religion, and it was therefore worthy of mention in the text'.⁵²⁹ He even thought it 'appropriate' to specifically mention the freedom, even though it was inherent in the overall fundamental right of religious freedom.⁵³⁰ He did not think that too much significance would be attributed to it which would then lead to unwarranted encouragement of proselytism and propaganda. He argued that, in recognising the

⁵²⁴ A/C.3/SR.1022, para. 18.

⁵²⁵ A/C.3/SR.1022, para. 18.

⁵²⁶ A/C.3/SR.1022, para. 18.

⁵²⁷ A/C.3/SR.1022, para. 18.

⁵²⁸ A/C.3/SR.1022, para. 4-5.

⁵²⁹ A/C.3/SR.1022, para. 4-5.

⁵³⁰ A/C.3/SR.1022, para. 4-5.

‘individual’s right not only to change his religion, but also to maintain it, the [Commission on Human Rights] had restored the balance in that respect’.⁵³¹ The addition of the words ‘to maintain’ established for each individual ‘the right to resist influences and pressures that might be exerted upon him, while the words “to change” enabled anyone to discuss and exchange ideas with his fellowmen, and recognized the possibility of modification of opinions’.⁵³²

Perera, the representative from Ceylon, addressed the subject from a historical point of view. Perera said ‘[...] that it was impossible to recognize an individual’s right to maintain his beliefs without at the same time giving him the right to change them’.⁵³³ He viewed it as ‘the lesson of history’.⁵³⁴ In this context, he referred to the untangling of church and state over many centuries, explicitly mentioning the Reformation, influenced by Martin Luther, who had strived for every individual to be able to maintain or change belief or religion. He also mentioned the Thirty Years’ War, resulting in the Peace of Westphalia.⁵³⁵ In addition, he thought that the principles entrenched in the first paragraph of Article 18 were ‘the resultant of opposing forces’, and those should not only be viewed in a historical perspective, but also within the context of contemporary society.⁵³⁶ With this historical argument, Perera made a strong case against Baroody’s amendment and demonstrated that the rights to apostasy, and implicitly proselytism, were not as groundless as Baroody made it seem.

Griñan, the Cuban, approached the matter from a sociological perspective and made an interesting remark regarding the legal framework in which proselytism could take place. He said that

[i]n view of the social evolution in the overwhelming majority of countries, it was proper to give explicit recognition to everyone’s right to maintain or to change his religion. The provisions of the limiting clause in paragraph 3 would enable countries where there was a State religion to guard against any proselytizing or missionary activities likely to be carried out in their territory for political ends. Freedom of religion, on which all delegations agreed, was safeguarded all the better if the right to change religion was explicitly recognized.⁵³⁷

This analysis demonstrates that there were representatives who provided well-founded arguments that refuted Baroody’s line of reasoning. In addition, it needs to be remarked that in the overall debate, Baroody *cum suis* offered a confusing conception of the freedom of religion or belief by implying that Article 18 ICCPR offered protection to ‘forceful proselytising actions’.

Certainly, one may consider examples in which pressure is exerted on an individual to change his religion or belief, but this would imply a *forced* conversion. This is not an exercise of the freedom of religion or belief but an example of religious coercion, which is not allowed according to the second paragraph in the suggested provision. The interpretations of the representatives

⁵³¹ A/C.3/SR.1022, para. 4-5.

⁵³² A/C.3/SR.1022, para. 4-5.

⁵³³ A/C.3/SR.1022, para. 21-22.

⁵³⁴ A/C.3/SR.1022, para. 21-22.

⁵³⁵ A/C.3/SR.1022, para. 21-22.

⁵³⁶ A/C.3/SR.1022, para. 21-22.

⁵³⁷ A/C.3/SR.1026, para. 9.

would lead to a form of religious freedom where no individual would be free to openly display their most fundamental ideas and beliefs and share them with others, which would define religion as a purely *private matter*. This also implies that Baroody *cum suis*' conception of freedom of religion is not one of liberty, but one of restraint. An individual who cannot discuss or change his religion basically has a religion imposed on him. It is therefore incorrect to claim that there is an inequality between the right to have and practice religion and the right to persuade others of the truth and rightfulness of those beliefs.

The freedom to peacefully encourage individuals to change their minds through reason is an essential element of religious freedom. Proselytism can be seen as a direct outflow of, or even inherent to the freedom of religion or belief. This does not mean that it is a freedom without limitations, but with regard to proselytism, the line is drawn at the use of force or violence (both verbal and non-verbal), and of course the limitations as suggested in the legal provision.

Furthermore, is it remarkable that the focus of the discussion regarding Article 18 ICCPR was so fixed on the freedoms to maintain and change religion that it was overlooked by the opposing representatives that the draft provision actually explicitly protects religious 'worship, observance, practice and teaching' in both private and in public, alone or in community, against state interference. These rights provide the possibility to express religious actions, which may be invoked to peacefully convert others.

In conclusion, it can be stated that, concerning the issue of proselytism, the arguments of Baroody and the proponents of his amendment focused on the threats of possible state proselytism and the religious influence of the majority, i.e., religion as such. They therefore tried to create a negative atmosphere around proselytising and sought to deny others the right to religious conversion, a strategy executed alongside their campaign to try to avoid any reference to the right to apostasy. This in contrast to their opponents, who argued that the focal point of the article should be the protection of the individual's freedom to choose in religious and belief matters.

3.4.5 The Freedom of Atheism

A different but related topic that was introduced during the discussion of Baroody's amendment was the question whether or not the (explicit mention of the) freedom to maintain and change religion encompassed the freedom of atheism. This question was not explicitly addressed, but many representatives made references to it, and their views varied.⁵³⁸

Baroody did not make any specific assumptions in his amendment's motivation regarding atheism, but he remarked that '[r]eligion was manifested in many degrees, ranging from absolute faith to absolute lack of faith, which was in itself a religion of a sort. It also existed in many forms, but essentially it was characterized, unlike thought and conscience, by its dogmatic and relatively stable nature'.⁵³⁹ The assumption that 'the lack of faith is in itself a religion of a sort' is interesting, as it raises the question if, in that case, it does not deserve the protection 'ordinary' religions have.

The Argentinian representative, Amadeo, had a contradictory view. He said that

⁵³⁸ Part of the context here is that atheism was associated with communism at that time, also a proselytising ideology. During the Cold War, Western countries were probably ambiguous with regard to atheism for geopolitical reasons. The Cold War was 'fought' to a large extent in the Middle East.

⁵³⁹ A/C.3/SR.1021, para. 10.

[m]any delegations had stressed that Article 18 covered not only religious but non-religious and anti-religious beliefs, and that those who did not believe in God should have the same freedom as those who did. It should be borne in mind that the article was intended to protect positive belief, not negative reactions to it. Man had free will and was therefore free to choose whether to believe or not, and he could not be forced to adopt either attitude. For that reason, Article 18 protected all forms of belief, even those without any religious content.⁵⁴⁰

However, Amadeo continued that

[...] the situation was not the same when such beliefs, instead of being the affirmation of a non-religious philosophy, were merely the negation of all belief, and sought only to destroy the beliefs of others. When atheists and other non-believers adopted such a militant attitude, they could not be protected under Article 18, for the aim of that article was to protect positive beliefs, characterized by a common faith in a Supreme Being. He would vote for the article on the understanding that it was intended to safeguard the free expression of positive beliefs, whether religious or secular, and did not cover the activities of militant atheists or anti-religious propagandists.⁵⁴¹

This comment raises several questions. For instance, when does an action qualify as militant, and which religions does Amadeo qualify as ‘positive beliefs’? An atheist affirms moral autonomy, an ethic not based on religion. Atheism is good news for the emancipation of ethics from a foundation which has, in (the non-religious) view, nothing to do with morals. The atheist strives to dissolve the marriage between religion and ethics. This perspective of moral autonomy has been defended by the majority of the great ethical thinkers of the past, from Plato in his *Euthyphro* to Nicolai Hartmann.⁵⁴² Amadeo’s explication that the freedom of atheism would be included in the freedom to maintain or change religion could therefore be interpreted as ‘the individual has the freedom to believe in whatever he or she likes, but not to the point of questioning my fundamental values’. This sounds contradictory.

The French representative, Bouquin, made a valuable contribution regarding the scope of Article 18 ICCPR. He said that ‘[t]he French delegation interpreted Article 18 in its broadest sense: freedom of conscience as recognized by the French Constitution implied both freedom to believe and freedom not to believe. In effect, that spirit of tolerance was shown in Article 18 and [...]. Moreover, there was no doubt that Article 18 applied to all cases, even that of atheists, for the word “belief” had a very broad meaning’.⁵⁴³

This secular point of view was expressed in a similar way by the Nigerian delegate, Kano. He argued that ‘the Committee should be above all religions. The age of crusades was over and the acts of religious intolerance which had been witnessed in the past would not occur again. The world

⁵⁴⁰ A/C.3/SR.1025, para. 27.

⁵⁴¹ A/C.3/SR.1025, para. 27.

⁵⁴² N. Hartmann, *Moral Freedom (Vol. 3 Ethics)*, New Brunswick/London, Transaction Publishers, 2004.

⁵⁴³ A/C.3/SR.1026, para. 6.

today was one and the Committee should avoid giving the impression that it was divided into religious blocs'.⁵⁴⁴ 'He thought the Committee need have no doubts about the meaning of the terms "religion" and "belief". The Commission of the Churches on International Affairs took the view that the term "belief" was intended to refer to those beliefs which were not considered by some people to be a religion'.⁵⁴⁵ According to Kano, this meant that atheism would also be protected under Article 18 ICCPR.

The point that Kano was trying to make, *to wit*, that the article has a secular basis, is plausible; however, he was incorrect in his historical prediction. Freedom of religion should indeed be upheld by all nations, but the sad historical reality is that this principle was (and still is) violated on a massive scale. During the period in which the draft covenant was discussed, the principle was violated in, for example, the Soviet Union and its satellite states, because a form of dogmatic atheism had been proclaimed. This form of atheism was not only a dogmatic creed adhered to by private individuals; it was also enforced by the state—it was political atheism. The principle was also violated in theocratic states like Saudi Arabia, where only one specific religion was accepted. In light of the five models that a state can adopt towards religion, secularist states where this liberal principle was recognised were not the norm from a global perspective. Moreover, wars in the name of religion were still fought, and unfortunately, religious division was (and still is) apparent in significant parts of the world. So it seems Kano confused normative and descriptive assertions.

The Moroccan's contribution was succinct. Delegate Anegay 'hoped that the Committee would be able to reach agreement on a text which would take into account all beliefs as well as the lack of belief'.⁵⁴⁶ Dadzie, the Ghanaian representative, interpreted Article 18 ICCPR in a similar way and argued that it included the right to have no belief. Dadzie, however, thought that it was not necessary to translate the freedom of thought, conscience, and belief into the freedoms to maintain religion, apostasy, atheism, and even agnosticism, for those rights were already an element of the overall freedom.⁵⁴⁷

The representative of Yugoslavia, Karapandza, took the argument further and argued for the *explicit* mention of the right to atheism.⁵⁴⁸ Accordingly, he was one of the few delegates who advocated that the right to abandon religion and have no religion at all be explicitly mentioned in Article 18 ICCPR, which was not the case in the draft created by the Commission on Human Rights. His stance is not so surprising, of course, given that communism dominated the Yugoslavian national system at that time. During the Cold War, fear of atheism was often fear of communism.

On balance, it seems that the question of whether or not the—explicit mention of the—freedom to maintain and change religion was intended to encompass the freedom of atheism has to be answered affirmatively. The degree to which it did so varied, for there were delegates who argued that atheism was part of the general right to freedom of religion or belief and that it was therefore not necessary to have the right to change and maintain religion explicitly mentioned.

⁵⁴⁴ A/C.3/SR.1025, para. 51.

⁵⁴⁵ A/C.3/SR.1025, para. 51-52.

⁵⁴⁶ A/C.3/SR.1024, para. 11.

⁵⁴⁷ A/C.3/SR.1025, para. 17.

⁵⁴⁸ A/C.3/SR.1027, para. 23.

Although only a few, some delegates did argue that an explicit mention was necessary in order to give shape and content to the right to atheism.

It is relevant to remark that what the views of the representatives have in common is whether or not the right to atheism falls under the header of freedom to maintain or change religion depends on the question if a narrow definition of the conceptions of religion and belief were used. The use of these different conceptions, or rather, varieties in scope, was embedded in the previous paragraphs, but it is important that some stances are elucidated more, which is the task in the following section.

3.5 The Scope of Article 18 ICCPR: A Religious Connotation?

The scope of the freedom of thought, conscience, and religion had been extensively debated in the Commission on Human Rights. Despite the apparent result of this debate, the Third Committee again engaged on the topic. As has been addressed, several delegates asked questions about the actual scope of the concepts of religion and belief.

It was discussed whether the concept of religion merely included systems of belief that had scriptures or prophets or if the concept of belief also included secular views. Some delegates thought that religion encompassed all belief in some metaphysical being, regardless of the presence of divine attributes. Some delegates expressed that it would be objectionable for the Third Committee to try and define religion as such.⁵⁴⁹ There are indeed various types of definitions of religion, and as was argued in paragraph 1.10, it is difficult to reach agreement on this matter.

As for the concept of ‘belief’, there were also various views. Certain representatives assumed that the provision merely encompassed religious beliefs, while other delegates expressed that Article 18 ICCPR was meant as a *comprehensive* definition of thought, conscience, and religion, and accordingly encompassed non-religious beliefs.⁵⁵⁰ In the end, it was Karapandza, the same delegate who wanted the right to atheism explicitly mentioned in Article 18 ICCPR, who asked the Secretariat if it could clarify to the Third Committee what the exact content was of the concept of ‘belief’ in Article 18 ICCPR. Karapandza wanted the Secretariat to elucidate on the article’s scope and on whether or not the article was intended to have a religious connotation, as the word ‘creencias’ in the Spanish text suggested, or if it encompassed secular views.⁵⁵¹

Humphrey, one of the leading scholars mentioned in the previous chapter, responded on behalf of the Secretariat and said that he would not give a ‘personal interpretation’ of the concept ‘belief’ or explain how the members of the Secretariat thought about the matter. He did, however, point out the footnote to paragraph 1 of the previously discussed *Study of Discrimination in the Matter of Religious Rights and Practices*, drafted by Krishnaswami in 1960.⁵⁵² This paragraph included the following: ‘In view of the difficulty of defining “religion”, the term “religion or belief” is used in this study to include, in addition to various theistic creeds, such other beliefs as agnosticism, free thought, atheism and rationalism’.⁵⁵³ Humphrey explained that, based on that study, the Sub-

⁵⁴⁹ A/4625, para. 51.

⁵⁵⁰ A/4625, para. 51.

⁵⁵¹ A/C.3/SR.1027, para. 22-23, 26.

⁵⁵² A/C.3/SR.1027, para. 34.

⁵⁵³ Krishnaswami, ‘The Study of Discrimination in the Matter of Religious Rights and Practices’,

Commission on Prevention of Discrimination and Protection of Minorities had drafted principles on ‘freedom and non-discrimination in the matter of religious rights and practices’, which were sent to the UN members for remarks.⁵⁵⁴ In part I, Article 4 of the draft principles, it was enshrined that ‘[a]nyone professing any religious or non-religious belief shall be free to do so openly without suffering any discrimination on account of his religion or belief’.⁵⁵⁵

This elucidation by Humphrey was clear and heralded the end of the discussions in the Third Committee regarding the scope of the concepts. This was, however, not the case for the discussion regarding the freedom to maintain or change religion. Representatives Lopez, Lima, and Sir Samuel Hoare, who had already taken a prominent place in the previously discussed deliberations, introduced a vital turn, which would permanently alter the provision.

3.6 The Brazilian and Philippine Amendment: Religious Choice

The Philippine delegate, Lopez, had argued during previous meetings that his delegation supported the text of the Commission on Human Rights, but he emphasised that he had also expressed that he wished that the draft of Article 18 ICCPR would be endorsed by a vast majority of the members of the Third Committee. The analyses in the previous paragraphs have indicated that, with the current formulation, it is unlikely that this would happen. Lopez therefore came up with a suggestion. He said that ‘[i]n supporting the principle that an individual had the right to maintain or change his religion or to have no religion at all, he had merely been emphasizing one major principle, the right of an individual to have freedom of choice’.⁵⁵⁶ Since the delegates in the Third Committee could not reach an agreement regarding the text of Article 18, he proposed to alter the second sentence of paragraph 1, ‘which would guarantee an individual’s right freely to choose his religion, and consequently to maintain or change it’.⁵⁵⁷ The sentence would then consist of the following words:

This right shall include freedom to have a religion of his choice and freedom, either individually or in community with others, to manifest his religion or belief in worship, observance, practice and teaching.⁵⁵⁸

Lopez expected that this ‘neutral wording’ would be satisfactory to all the members of the Third Committee.⁵⁵⁹ He also said that ‘[h]e was not insensitive to the Saudi Arabian representative’s argument that the wording of the article should in no way give direct or positive encouragement to the practice of proselytizing, but at the same time it would be wrong to think that the article could ever be interpreted as prohibiting the activities of missionaries’.⁵⁶⁰

E/CN.4/Sub.2/200/Rev.1, New York 1960, p. 1. See also *A/C.3/SR.1027*, para. 34.

⁵⁵⁴ *A/C.3/SR.1027*, para. 34.

⁵⁵⁵ *E/CN.4/800*, para. 160, resolution 1 (XII), annex. *E/CN.4/800*; *E/CN.4/Sub.2/206*, para 144; *E/CN.4/800*; *E/CN.4/Sub.2/206*, para 160, resolution 1 (XII) annex, provides the entire text of the draft principles.

⁵⁵⁶ *A/C.3/SR.1024*, para. 8.

⁵⁵⁷ *A/C.3/SR.1024*, para. 8.

⁵⁵⁸ *A/C.3/SR.1024*, para. 8.

⁵⁵⁹ *A/C.3/SR.1024*, para. 8.

⁵⁶⁰ *A/C.3/SR.1024*, para. 8.

During the following meeting, the Philippine and Brazilian delegation (representative Lima, who had supported Baroody's amendment) collaborated and drafted a suggestion which they hoped would be satisfactory to many states.⁵⁶¹ They introduced two formal amendments, consisting of the proposal introduced by Lopez during the previous meeting.⁵⁶²

Lopez motivated their amendment by arguing '[...] that the basic purpose of Article 18 of the draft Covenant, and the corresponding article of the Universal Declaration of Human Rights, was to ensure to everyone the untrammelled right to exercise freedom of choice in the matter of religion or belief'.⁵⁶³ He continued by explaining that '[h]is objection to the Saudi Arabian proposal to delete part of the sentence [...] had been that it might lead to misinterpretations of the scope of the right in question. It was not sufficient to say that the right to change one's religion or belief was implicit in the right to freedom of religion'.⁵⁶⁴ Lopez wanted to emphasise that '[...] the two delegations were not proposing anything which would affect the underlying freedoms concerned or which would in any way alter the scope of the article as it had been drafted by the [Commission on Human Rights] [...]. The amendments fully implied the right of individuals to maintain or change their religion or belief, inasmuch as that would constitute the exercise of their freedom of choice'.⁵⁶⁵ It seems that these delegates had sincere intentions, but as will be demonstrated, the introduction of this amendment would *alter* the course and scope of Article 18 ICCPR permanently.

In reaction to the proposal, Baroody indicated that he did not find it 'satisfactory'.⁵⁶⁶ However, the delegates who were sympathetic to his cause disagreed. Amadeo, the Argentinian representative, had expressed in previous meetings that he favoured a simple text and had therefore been supportive of the Saudi Arabian proposal. With regard to the Brazilian and Philippine amendments, he was positive, for they brought out the 'essential point, which was the individual's freedom of choice in religious matters'.⁵⁶⁷ Malyali, the representative from Cyprus, expressed that he had similar thoughts as the Brazilian and Philippine delegates and would therefore endorse the amendment.⁵⁶⁸ The Spanish representative, De Las Barcenas, said that the amendment 'improved the text'.⁵⁶⁹

The United Arab Republic, represented by EL-Erian, was also positive and noted that the amendments offered an 'excellent basis for agreement' and had removed the 'ambiguities'.⁵⁷⁰ He thought that Article 18 '[i]n its present wording [...] gave rise to some misgivings and was liable to misinterpretation. To obviate that risk, which was particularly serious in view of the juridical scope of the Covenants, it was important to correct the wording of the article'.⁵⁷¹ Perera thought that the

⁵⁶¹ A/C.3/SR.1025, para. 1.

⁵⁶² A/C.3/L.877.

⁵⁶³ A/C.3/SR.1025, para. 2.

⁵⁶⁴ A/C.3/SR.1025, para. 2.

⁵⁶⁵ A/C.3/SR.1025, para. 2.

⁵⁶⁶ A/C.3/SR.1025, para. 13.

⁵⁶⁷ A/C.3/SR.1025, para. 25.

⁵⁶⁸ A/C.3/SR.1025, para. 30.

⁵⁶⁹ A/C.3/SR.1026, para. 3.

⁵⁷⁰ A/C.3/SR.1026, para. 13.

⁵⁷¹ A/C.3/SR.1026, para. 13.

amendment ‘offered a very satisfactory solution’.⁵⁷² Even Farhadi, who strongly supported Baroody’s amendment, thought that the suggestion was ‘clear and very general in scope; it should be acceptable to all delegations which favoured the principle set forth in Article 18 [...]’. In essence, it was only a matter of wording that separated the various members of the Committee [...]’.⁵⁷³

A meeting later, it seemed that Baroody had changed his mind. He again emphasised ‘[...] that the right of everyone to change, maintain and even renounce his religion or belief was implicitly recognized in the first sentence of Article 18. Nevertheless, as certain representatives were anxious to have the right expressly proclaimed his delegation was prepared to withdraw its amendments [...] in favour of the compromise text submitted by Brazil and the Philippines [...]’.⁵⁷⁴ He continued that the amended ‘text of Article 18 would not be entirely satisfactory to his delegation but it would no longer be liable to convey the impression that the Committee unwittingly sanctioned interference with beliefs that some people regarded as sacred’.⁵⁷⁵ For these reasons, the Saudi Arabian delegation withdrew its amendment in lieu of the amendment drafted by Brazil and the Philippines.⁵⁷⁶

However, not all representatives were that easily persuaded by the amendment’s suggested compromise text. For instance, the Venezuelan representative, Rey, argued that the suggestions ‘were judicious and well phrased’, but remarked that the newly formulated freedom did not explicitly proclaim the right of the individual to change religion.⁵⁷⁷ He preferred the text as it had been introduced by the Commission on Human Rights.⁵⁷⁸ Representative Dobson from Australia shared this opinion.⁵⁷⁹ Eshel, the Israeli delegate, had a similar view and said that she would not support the Philippine and Brazilian amendment for it ‘did not spell out the rights in question clearly and unambiguously’.⁵⁸⁰ Boersma from the Netherlands also wished to continue with the text of the Commission on Human Rights, for he found it clearer.⁵⁸¹ These delegates stressed that the concept of ‘choice’ embodied an *ambiguity*.

3.6.1 Freedom to Have or to Adopt

In the 1027th meeting, the last meeting in which the subject was discussed, the UK representative, Sir Samuel Hoare, drafted a suggestion that would delete the explicit mention of the freedom to change religion or belief.

Hoare argued that the discussions in the Third Committee had made it clear that there was no discrepancy between the understanding of the actual scope of the provision and the fact that the right to maintain and change religion was implicitly included. He continued that the discussion was now merely about the phrasing of the Article, especially since Saudi Arabia had withdrawn its

⁵⁷² A/C.3/SR.1026, para. 20.

⁵⁷³ A/C.3/SR.1026, para. 1.

⁵⁷⁴ A/C.3/SR.1026, para. 26.

⁵⁷⁵ A/C.3/SR.1026, para. 27.

⁵⁷⁶ A/4625, para. 46.

⁵⁷⁷ A/C.3/SR.1026, para. 14.

⁵⁷⁸ A/C.3/SR.1026, para. 14.

⁵⁷⁹ A/C.3/SR.1026, para. 16.

⁵⁸⁰ A/C.3/SR.1025, para. 46.

⁵⁸¹ A/C.3/SR.1025, para. 43.

amendment. He argued that it was unwise of the representatives to imply that the Third Committee '[...] was divided on the substance of the article, which was not the case'.⁵⁸² Since the provision '[...] dealt with a very delicate and sensitive subject, it should be adopted unanimously, if possible, as it had been in the [Commission on Human Rights]'.⁵⁸³ To accommodate the state delegates who preferred the text of the Commission on Human Rights, he suggested inserting the words 'or to adopt' after the words 'to have' in the second sentence of paragraph 1.⁵⁸⁴ This means that the text would be changed into:

This right shall include freedom to *have or to adopt* [emphasis added] a religion of his choice and freedom, either individually or in community with others, to manifest his religion or belief in worship, observance, practice and teaching.

This was the addition of the concept of 'adopt' to the Brazilian and Philippine amendment. The Brazilian and Philippine delegations welcomed the British suggestions and said that the '[...] words not only made no change in the substance, they even strengthened its formulation. The expression 'to have a religion or belief' was somewhat neutral, whereas the idea of adopting a religion or belief was more active and was a better reflection of the underlying idea of the right to change one's religion'.⁵⁸⁵

The first delegate who accepted this revised text was the Italian, Capotorti. He was of the opinion that the freedom to change religion or belief was now in essence guaranteed by both the amendments and the text drafted by the Commission on Human Rights.⁵⁸⁶ The delegate from Indonesia, Djohan, had initially endorsed the text of the Commission on Human Rights, but after the Brazilian and Philippine amendment was supplemented by the UK, he would also vote in favour of it.⁵⁸⁷ As the final vote would demonstrate, this would be a common occurrence.

Karpadanza was one of the few delegates who was not a proponent of the newly made suggestions. He argued that they still derived from the actual wording of Article 18 Universal Declaration. However, he would accept the amendments 'in a spirit of compromise', as they were drafted in a 'conciliatory spirit'.⁵⁸⁸ The representative of the Dominican Republic, Cappa, had a similar opinion.⁵⁸⁹ Rey, the Venezuelan representative, expressed that he still preferred the text of the Commission on Human Rights, for it explicitly addressed the freedom to maintain and change religion, and suggested combining it with the UK, Brazilian, and Philippine amendment.⁵⁹⁰ Unfortunately, his idea did not find any support.

The debates about Article 18 ICCPR eventually ended, and the time came for the voting procedure. It would soon be clear that the combination of amendments introduced by Brazil, the Philippines, and the UK was decisive in the debate regarding the freedom to change or maintain

⁵⁸² A/C.3/SR.1027, para. 1.

⁵⁸³ A/C.3/SR.1027, para. 1.

⁵⁸⁴ A/C.3/SR.1027, para. 2.

⁵⁸⁵ A/C.3/SR.1027, para. 3.

⁵⁸⁶ A/C.3/SR.1027, para. 11.

⁵⁸⁷ A/C.3/SR.1027, para. 14-15.

⁵⁸⁸ A/C.3/SR.1027, para. 25.

⁵⁸⁹ A/C.3/SR.1027, para. 32.

⁵⁹⁰ A/C.3/SR.1026, para. 14.

religion or belief, or rather the freedom to have or adopt a religion of choice.

Separate votes were conducted on the amendments and paragraphs: The Brazilian and Philippine amendment, which included the words ‘freedom to have a religion of his choice’ was adopted by 67 votes to none, with 4 abstentions. The UK amendment which introduced the words ‘or to adopt’ was adopted by 54 votes to none, with 15 abstentions. As a whole, the amended paragraph 1 of Article 18 ICCPR was adopted by 70 votes to none, with 2 abstentions. The amended paragraph 2 of Article 18 ICCPR was adopted by 72 votes to none, with 2 abstentions. Paragraph 3 of Article 18 ICCPR was adopted unanimously.

The most impressive but also baffling conclusion was that Article 18 ICCPR as a whole was adopted unanimously, meaning that all opponents of the text, including Baroody and the delegates who still favoured the text as it had been drafted by the Commission on Human Rights, voted in favour of Article 18 ICCPR.⁵⁹¹ What is also interesting is that, at no point during any of the debates on this topic was the word ‘apostasy’ used by any of the representatives.

3.6.1.1 A Spirit of Compromise

With regard to the voting procedure and adoption of the text, some essential remarks are in order. A first note is in line with what the United States’ representative Lamey said during the debates. Lamey, noted that ‘[...] the end result of the Committee’s deliberations on Article 18 would not be benefited by a vote carried by a bare majority, thus imposing upon a reluctant minority certain words or provisions which they considered objectionable’.⁵⁹² This was a legitimate remark, as there was considerable resistance against the phrasing of the text. What would it have meant for the ultimate validity and effect of Article 18 ICCPR if a small majority had adopted it?

Lamey’s remark is also relevant for another reason: it demonstrates the fact that this representative clearly envisioned the universal value that the world community was trying to (legally) establish, and eventually did establish with its unanimous decision. Various other delegates shared Lamey’s opinion and expressed the view that they were striving for a text that could be adopted unanimously, which was why they were willing to discuss and revise the wording of the article. Accordingly, in a conciliatory spirit, efforts were made to reach a consensus. In a *spirit of compromise*, amendments were introduced and accepted.

Evidently, this is what a legislator does: make compromises in order to reach a consensus. This, however, introduces some interesting questions, such as: did this conciliatory spirit strengthen or weaken the text of Article 18 ICCPR? Or rather, did the spirit of compromise and desire to reach a consensus have an impact on the realisation of the normative aspirations that were set out in Article 18 of the Universal Declaration in 1948? From the previous analysis it seems that, with some exceptions, the delegates thought this not to be the case. However, as the analyses have also demonstrated, this may actually depend on how the concept of ‘choice’ is interpreted. It seems that an ambiguity was introduced into the phrasing of the text which leads to the risk of misinterpretation, misuse, or arbitrary application. This assumption requires clarification, but in the subsequent sections I first examine how the textual alteration of the freedom to change religion or

⁵⁹¹ A/C.3/SR.1027, para. 36. A/4625, para. 57.

⁵⁹² A/C.3/SR.1027, para. 20. He would therefore ‘give very careful consideration’ to the Brazilian, Philippine, and UK amendment.

belief was received and interpreted within academic circles. This is the third perspective from which the freedom to change religion or belief is discussed.

3.7 An Academic View

Within academia, there are various views regarding the interpretation of Article 18 ICCPR, which I think can generally be distinguished into two perspectives. On the one hand, there is the view that the freedom to change religion is clearly anchored within the phrasing ‘the freedom to have and adopt a religion of choice’ in Article 18 ICCPR, which I will refer to as the *inclusive stance*. On the other hand, there is the view that it is not that self-evident that the adopted phrase includes this freedom, which I have indicated as the *exclusive stance*. Both stances are discussed in further detail in the following sections. I will start with the former.

3.7.1 The Inclusive Stance

One of the scholars who may be qualified as supportive of the inclusive stance is Derek H. Davis. Davis examines the three primary international documents regarding religious freedom and addresses the topic of changing and maintaining religion. He correctly recognises that, throughout the drafting process of the Universal Declaration and the ICCPR, the right to change religion was a ‘controversial issue’.⁵⁹³ He also writes that

[i]n drafting the 1981 Declaration, references to the right to change one’s religion were deleted from the text in both the preamble and Article 1, departing, therefore, from the language used in the Universal Declaration and the 1966 Covenant. Consequently, the text of the 1981 Declaration was weakened, but to satisfy those who objected to the deletion, a new Article 8 was added, which states that the 1981 Declaration does not in any way derogate or restricts the freedoms as adopted in the Universal Declaration or the ICCPR.⁵⁹⁴

This matter was also addressed in the previous section. What is relevant in this regard is that Davis recognises the fact that the text was weakened, but overlooks the fact that the phrase ‘to change religion or belief’ had already been deleted from the text of the ICCPR. This negation can also be inferred from the fact that he writes that ‘[a]rticle 18 ICCPR guaranteed the same rights listed in Article 18 of the Universal Declaration, then adds more [...]’.⁵⁹⁵

There are scholars who seem to disregard the possible legal implications of textual changes altogether and assume that the freedom to change religion was ensured in both the Universal Declaration and ICCPR. One such academic is legal scholar Paul Taylor, who has made an extensive study of both European and international practices regarding religious freedom. Taylor takes a somewhat similar view as Davis on the ICCPR and claims that ‘[t]here is little doubt that in spite of the immense struggle over the drafting of Article 18(1) of the ICCPR, it embraces freedom on the part of the individual at all times either to change or to maintain religious belief or

⁵⁹³ Davis, 2002, p. 229.

⁵⁹⁴ Davis, 2002, p. 229.

⁵⁹⁵ Davis, 2002, pp. 225-226. This stance can also be derived from other passages, for example on page 229.

adherence'.⁵⁹⁶ He concludes his paragraph on this topic with the words '[...] the right to change one's religion seems firmly established in both the United Nations and European systems'.⁵⁹⁷ The fact that there was a difference in phrasing does not have any consequences, according to Taylor.

Theo van Boven, whose expertise on this topic was established in the previous chapter, comes to a similar view in his dissertation after examining the travaux préparatoires. In contrast to Davis and Taylor, Van Boven does address the phrasing of the provision in the ICCPR. He emphasises that editorial adjustments were made to the text of the Universal Declaration in the ICCPR. He claims that the only notable difference was the modification of the words 'freedom to change his religion or belief' into (then still in draft form) 'freedom to have or adopt a religion or belief of his choice'.⁵⁹⁸ However, according to Van Boven, the modification is more of a 'psychological than substantial nature'.⁵⁹⁹ He writes that it '[o]bviously [...] gives the Muslim countries satisfaction that the words "to change", which they resisted in a strongly emotional way, no longer appear in Article 18 of the draft convention. On the other hand, the replaced formula guarantees the freedom of every person to come to a new decision of faith and to draw the consequences'.⁶⁰⁰

Van Boven's conclusion leaves the reader puzzled. On the one hand, he notices that the Islamic states 'have resisted in a strongly emotional way'. That raises questions about the position of apostasy and apostates in Islamic states. Why is there so much resistance to apostasy in those states? Does that have anything to do with the religion to which the majority of the people subscribe? Van Boven notes it has to do with emotions, but that does not provide an explanation; why are those emotions there? Van Boven fails to further inquire into this most relevant issue. I address this in the following section.

A similar conclusion is drawn by Karl Josef Partsch, who claims that '[i]n a spirit of compromise [...] the language was changed to make explicit the right to maintain one's religion as well to change it. The final wording recognises the individual's right "to have or to adopt a religion or belief of his choice". That clearly implies the right to abandon a religion to which one adhered previously as well as the right to adopt a different religion'.⁶⁰¹ This is in line with Richard B. Lillich. According to Lillich 'the gist of Article 18 [Universal Declaration] finds expression in Article 18(1) of the Political Covenant, although the freedom "to change" has been replaced by the freedom "to have or to adopt a religion or belief", a shift which appears to be one more of verbiage than of substance'.⁶⁰² He elucidates this point in a footnote, stating that '[i]ts omission from the Political Covenant appears insignificant, however, in view of statements by representatives of such states that this freedom was implicit in the guarantee of religious freedom'.⁶⁰³

⁵⁹⁶ Taylor, 2005, p. 31.

⁵⁹⁷ Taylor, 2005, p. 42.

⁵⁹⁸ Van Boven, 1967, p. 160.

⁵⁹⁹ Van Boven, 1967, p. 160.

⁶⁰⁰ Van Boven, 1967, p. 160. The original text is in Dutch.

⁶⁰¹ K.J. Partsch, 'Freedom of Conscience and Expression, Political Freedoms in The international Bill of Rights', in L. Henkin (ed.) *The Covenant on Civil and Political Rights*, New York, Columbia University Press, 1981, p. 211.

⁶⁰² R.B. Lillich, 'Civil Rights', in T. Meron (ed.) *Human Rights in International Law: Legal and Policy Issue*, Oxford, Clarendon Press, 2012 [1984], p. 159.

⁶⁰³ Lillich, 2012 [1984], p. 159.

John P. Humphrey, in his capacity as a professor at McGill University and no longer the leader of the UN Secretariat, observes that the right to change religion or belief '[...] is not mentioned in Article 18 of the Political Covenant, an omission that can be attributed to the persuasive powers of the active representative of Saudi Arabia. But the language of the Political Covenant as adopted certainly included the right to change one's religion or belief [...]'.⁶⁰⁴

For these authors (Davis, Taylor, Van Boven, Lillich, Partsch, and Humphrey) it seems that the textual changes—going from 'the right to change religion', in accordance with the text in the Universal Declaration, to the 'the right to have or adopt a religion of choice', were merely a matter of semantic adjustment or a shift in verbiage which did not affect the substance of the legal provision. They adopted the *inclusive stance*, which means that the formulations adopted in 1948, 1966, and 1981 seem to imply the same right: the freedom to change religion or belief.

3.7.2 The Meaning of Choice

On a semantic level, this inclusive stance has some validity, but taking into account the attitude towards the freedom to change religion of countries where a firm state religion (especially Islam) is established, the omission of these words seems more significant and substantial than as assumed by these scholars (and by the UN experts that were discussed). It fails to recognise the precarious position of apostasy and apostates in Islamic countries. In a broader sense, it may be argued that the freedom of religious choice is a sensitive issue for all religions.⁶⁰⁵ But, as various scholars have argued and research has demonstrated, the conversion to another religion or simply the renunciation of Islam may have far-reaching consequences in various Islamic states, from the dissolution of marriage to blasphemy charges and the death penalty.⁶⁰⁶

What is relevant in this regard is that it must be questioned whether the concept of 'choice' entails the same rights as the concept of 'change', or whether 'choice' means choosing a religion and conforming to it, so choosing once and for all, meaning that the choice must be a definitive one. More to the point: what if the choice has already been made simply by the person having been born into a particular religious family? For a child born into an Islamic family, the choice to be

⁶⁰⁴ Humphrey, 2012 [1984], p. 179. Humphrey retired from the UN in 1966.

⁶⁰⁵ The reaction to apostasy may differ within the various religious communities, varying from disappointment and ex-communication to stoning.

⁶⁰⁶ A.E. Mayer, 'Universal Versus Islamic Human Rights: a Clash of Cultures or a Clash with a Construct?', *Michigan Journal of International Law*, Vol. 15, No. 2, pp. 308-404; A.E. Mayer, *Islam and Human Rights: Tradition and Politics*, 5th ed., New York, Routledge, 2012; R. Koopmans, *Het vervallen huis van de islam. Over de crisis van de islamitische wereld*, Amsterdam, Prometheus, 2019; C. Schirrmacher, *Let there Be no Compulsion in Religion (Surah 2:256). Apostasy from Islam as Judged by Contemporary Islamic Theologians*, Eugene (Oregon), Wipf and Stock, 2016; C. Schirrmacher, 'Apostasy: What Do Contemporary Muslim Theologians Teach about Religious Freedom?', *International Journal for Religious Freedom*, Vol. 6, No. 1, 2013, pp. 189-201; C. Schirrmacher, 'Defection from Islam: A Disturbing Human Rights Dilemma', Vol. 3, No. 2, 2010, pp. 13-38; P. Marshall & N. Shea, *Silenced: How Apostasy and Blasphemy Codes are Choking Freedom Worldwide*, Oxford, Oxford University Press, 2011; P. Sookhdeo, *Freedom to Believe: Challenging Islam's Apostasy Law*, Three Rivers (Michigan), Isaac Publishing, 2009; A. Theodorou, 'Which Countries Still Outlaw Apostasy and Blasphemy', 29 July 2016, *Pew Research Center*, pewforum.org; Zwemer, 1924. P.B. Cliteur, *The Secular Outlook: In Defense of Moral and Political Secularism*, Chichester, Wiley-Blackwell, 2010; Global Legal Research Center, 'Laws Criminalizing Apostasy in Selected Jurisdictions', Washington D.C., The Law Library of Congress, 2014; Pew Research Center, 'Trends in Global Restrictions on Religion', 23 June 2016, *Pew Research Center*, pewforum.org; Cliteur, 2010.

Muslim has already been made, namely, by the parents. In Islam, it is generally presumed that every child is born a Muslim, especially if it is born to an Islamic mother.⁶⁰⁷ This assumption stems from the views on creation within Islam. However, from a non-Islamic, or rather an outsider's perspective, the parents *choose* to raise their child in an Islamic way. Is this then automatically the sole choice that is 'allowed' and thus definitive? In accordance with such a view, the freedom of choice does not seem to clarify that changes to the original religion may be made.

By moving to the concept of 'choice', an ambiguity was introduced into the text. It seems that the states played into the hands of the delegations who opposed the right to apostasy, because the freedom of choice seems to leave more room to interpret the provision according to national law, in which the right to apostasy might not be guaranteed. It provides the possibility for states to interpret the freedom of religious choice as the freedom of the individual to make a permanent choice about what religion to adhere to; it does not (explicitly) clarify that the individual has the right to change his mind in religious matters at any time he likes. The provision now lacks *conceptual clarity*.

The question of how there can be a 'free choice' without the right to change is vital. The interpretation that the right to free choice implies difficulties for the right to apostasy seems unsubstantiated at first glance; it sounds like an interpretation that renders the right meaningless, because it is logically inconsistent. One might even say that this is neither a matter of interpretation nor a matter of semantic adjustment, but a matter of logic. However, this argument does not take into account that the concept of 'choice' may be interpreted differently by states, and so various conceptions are possible.

Considering these remarks, the freedom of religious choice does not necessarily seem to imply the right to apostasy, for the reason that it does not unequivocally imply the freedom to change religion. For this reason, not using the concept of change seems to be more than mere window dressing, as was suggested by the UN experts and the scholars who adopt the inclusive stance.

To this view, a critical side note must be made. I am not arguing that enacting the right to adopt the religion of one's choice is worse than having no provision on the freedom of religion (adopted unanimously) at all. In addition, with this observation I do not mean to say that granting the right to adopt a religion of one's choice as such is counterproductive in Islamic countries. I am arguing that it *can* be counterproductive. What is emphasised here is that the current wording of the text is rather obscure, which was (perhaps) unwittingly enabled by the other states, which were seeking consensus for political reasons. On the surface, the text may appear to be the same, but the implementation may vary. I will elaborate on this issue after I have discussed the exclusive stance.

3.7.3 The Exclusive Stance

The exclusive stance, so the position which does not uncritically adopt the view that Article 18 ICCPR encompasses the freedom to apostasy, is, inter alia, supported by legal scholar Malcolm D. Evans, who states that

⁶⁰⁷ The Oxford Dictionary of Islam, 'Fitra', *The Oxford Dictionary of Islam*, retrieved 5 March, 2021.

[t]he wording finally adopted might seem to anchor the article within comfortable proximity of the right to change one's religion. Yet precise wording to this effect was expressly excluded from the text and it is open to the interpretation that it allows an individual to continue in a faith, to adopt a faith, but not abandon a faith already held. It has, however, become generally accepted that Article 18 does embrace the right to change religion, although the evidence advanced in support of this is not wholly convincing.⁶⁰⁸

Evans thus points out that it might be possible to interpret the covenant in such a way that the right to apostasy is absent from it, but he seems somewhat cautious in reaching this conclusion.

Bahiyyih G. Tahzib continues this line of reasoning. She writes that a difference is notable between Article 18 Universal Declaration and Article 18 ICCPR and points out that '[u]nlike Article 18 of the UDHR, Article 18, paragraph 1, of the ICCPR no longer explicitly enumerates freedom to change one's religion or belief as an indispensable component of the right to freedom of thought, conscience and religion. It is hence left to the discretion of individual States Parties to determine whether freedom to change one's religion or belief falls within the scope of the right to freedom of thought'.⁶⁰⁹

In this regard, the stance of Willy Laes, a Belgian human rights activist, is essential. Laes argues that the eight abstentions from the final vote on the Universal Declaration were swept under the rug by the consenting states. Laes devotes a chapter in his book to the, as he calls it, 'vanishing act of Articles 18 and 16 of the Universal Declaration'. He argues that Islamic states, in this case Afghanistan, Egypt, Saudi Arabia, and Yemen, failed in their endeavour to delete the freedom to change religion or belief from the Universal Declaration, but eventually succeeded at it when the phrasing in Article 18 ICCPR was altered.⁶¹⁰

3.8 Diminishing the Normative Force

Evans, Tahzib, and Laes have the same views regarding the textual changes of Article 18 ICCPR and the possible consequences of this: the idea that the freedom to change one's religion does not (have to) naturally stem from the current wording. Moreover, from their perspectives, it can be inferred that the difference in phrasing is not merely a matter of semantic adjustment. Especially the argument made by Tahzib that the actual attribution of the right to change religion can now come down to the discretion of the individual state is essential.

In line with this argument, it can be argued that the consequences may be more severe: The text is now open to various interpretations, which could result in legal inequality between the individual states. This seems to undermine the direct legal obligations for states, which were supposed to be imposed with the adoption of the Covenant. By altering the concepts and offering room for various interpretations, states are provided the opportunity to use a *restrictive interpretation* of the freedom of religion or belief, resulting in a narrow conception of the right.

⁶⁰⁸ Evans, 1997, pp. 201-202.

⁶⁰⁹ B.G. Tahzib, *Freedom of Religion or Belief. Ensuring Effective International Legal Protection*, The Hague, Martinus Nijhoff Publishers, 1996, p. 87.

⁶¹⁰ W. Laes, *Mensenrechten in de Verenigde Naties, een verhaal over manipulatie, censuur en hypocrisie*, Antwerpen, Garant, 2011, p. 122.

This is unfortunate, since the availability of the right to apostasy could just be the result of interpretation. It can come down to the *willingness* of the state to grant the right. Obviously, with the implementation of legal provisions, interpretation—the act of understanding or of giving a particular meaning to a legal concept—is a continual issue. However, in this case, or rather where fundamental rights are concerned, it should be made explicit in the formulation. For an individual to have or not have the right to apostasy as a mere result of interpretation seems to be in contrast with not only the principle of *equality* before the law but also with the principle of *legal certainty*. As is often advocated in the human rights discourse, in order to protect fundamental rights from misinterpretation, misuse, or arbitrary application, the state must formulate the freedoms in such a way, preferably explicitly, that the individual knows exactly what his rights are in the legal order. If this is not the case, the state and its judiciary will be enabled to *disregard* the right to apostasy and say that the right is not a protected dimension of the freedom of religion or belief. Individuals who are trying to leave a religion, or who are, more specifically, ‘Leaving Islam’, to quote the title of a collection of testimonials by Ibn Warraq, may be left empty handed (legally).⁶¹¹

The ICCPR should have been a continuing substantiation of the right established in 1948, but this formulation may be interpreted as a deviation from the original intent of the delegates of the world community to protect the right to apostasy. It can be seen as a weakening of the moral persuasiveness and universalism of the Universal Declaration. Evidently, the enshrining of the freedom of religion or belief in an international treaty was a significant advancement towards the realisation of an international legal order, and it is important that this be recognised; however, it has come at the expense of conceptual clarity, putting the right to apostasy at stake, resulting in the diminishment of the *normative force* of an essential element of the religious-freedom provision.

In a certain sense, it is a matter of concern that, within the UN and in academia, there is little to no recognition of the fact that recent decades have seen an implicit diminishment of the normative force of an essential element of the religious freedom provision. With the (current) violations of religious freedom, it should be realised that the implementation, or rather a successful appeal to the freedom to change religion or belief by an individual, is not a given. With the current phrasing, the right to apostasy can be construed on the basis of Article 18 ICCPR, but we need text and original intent to come to this conclusion. The text of the Universal Declaration is therefore preferable to the text in the Covenant.

The plea for actually reasserting this right in states where it is under pressure by, for example, UN experts or state representatives who are discussing international relations and policy will be more persuasive if there is a well-defined, conceptually clear, and distinctive normative foundation which is directly binding. A reassertion, or reconceptualisation, of the freedom to change religion or belief as a part of the general right to freedom of religion or belief would for this reason not only be welcome but seems necessary for an establishment (or re-establishment) of the normative contours of this right. A suggestion hereto is made in the next section.

3.9 A Reconceptualisation of Article 18 ICCPR

The basic idea is that the reconceptualisation of the freedom of religion or belief encompasses equally and explicitly all the individual rights it was originally intended to protect. To accomplish

⁶¹¹ I. Warraq, *Leaving Islam: Apostates Speak Out*, Amherst, Prometheus Books, 2003.

this, it must consist of a clear and explicit enumeration. This would mean that the claim that there was an explicit focus on religion, instead of on an equal treatment of all three concepts (thought, conscience, and religion), in Article 18 ICCPR, as Baroody and other critics maintained, is rendered moot. The original words of ‘freedom to change religion or belief’ are used, supplemented with the words ‘maintain’, and ‘choose’. In this way, all three major proposals—the final text of the Universal Declaration, draft Article 18 ICCPR of the Commission on Human Rights, and the adopted text of Article 18 ICCPR—are considered. The reconceptualisation of Article 18 ICCPR would read as follows:

1. Everyone shall have the right to freedom of thought, conscience, religion and belief. This right shall include the freedom to choose, maintain and change thought, conscience, religion and belief, either individually or in community with others and in public or private, to manifest his thought, conscience, religion or belief in worship, observance, practice and teaching.
2. No one shall be subject to coercion, which would impair his freedom to choose, maintain or change his thought, conscience and religion.
3. The freedom to manifest one’s religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others.

In this reconceptualisation, the supposed focus on religion is deleted, and the concepts of thought, conscience, religion, and belief (with all its facets) are addressed equally and explicitly. It is thus a clear enumeration of rights, and the inclusion of the three major proposals should ensure that, in theory, all parties are satisfied. The second paragraph makes it clear that impairment of thought, conscience, religion, and belief is not allowed. The strength of this suggestion is that it could not lead to a detraction of the normative framework, and in years to come the UN experts will not have to extensively interpret the provision since it already includes a broad scope.

One wonders: if this proposal had been suggested during the drafting period, would it have convinced and satisfied the Saudi Arabian delegation and its supporters? Probably not, for the simple reason that this proposal would not have been politically palatable and would have diminished the grounds for their constituency to interpret the article as they would have seen fit, which is in essence a denial of the right to apostasy for individuals. Most likely, the provision would also not have been adopted unanimously. Nevertheless, this reconceptualised provision enumerates the concepts explicitly and seems an honest reflection of the introduced arguments and scope of the debate. Moreover, this suggestion can be a starting point for future theoretical normative references. However, given the (legal) development of the freedom of religion or belief and the current political environment, this suggestion seems, unfortunately, unrealistic.

3.10 Conclusion

In this chapter, I addressed the issue of the freedom to change religion or belief. This subject was examined from three perspectives. First, a textual analysis of the legal documents was made. I argued that the various textual alterations demonstrate that there is a change in phrasing from ‘to change religion or belief’ to ‘have or to adopt a religion or belief of choice’ to ‘religion or whatever

belief of choice'. These textual changes indicate that the 1948 formula was not repeated in 1966 and 1981. The consequences of these textual alterations are that there is a decline from an explicit recognition of the right to change religion or belief to an implicit recognition. Within UN circles, however, the view prevails that Article 18 ICCPR and the later-accepted 1981 Declaration include the right to apostasy, even though the evidence for this stance is not sufficiently compelling.

The second analysis demonstrated the motivations of the drafters of the ICCPR for changing concepts. This legal-historical analysis proved to be imperative to understand and assess the complex debate regarding the right to apostasy. The drafters had a difficult time reaching a consensus on the phrasing of the freedom to change religion or belief. The debates were fierce, and the Saudi Arabian delegation continually objected to the chosen language of 'to change religion or belief'. It was clear that Baroody wanted to make the text more palatable for his constituency, and he utilized his persuasive powers to dominate the discussions. Although his stance triggered fierce responses from the other delegates, in a spirit of conciliation and out of a desire to reach a consensus, the representatives continued to alter the phrasing of the text.

In the end, Brazil and the Philippines suggested a new approach, and with an addendum of the United Kingdom, the 'solution' was in sight. The explicit right to apostasy was replaced by the ambiguous phrase 'have or to adopt a religion or belief of choice'. Consensus seeking in the drafting of treaties is unquestionably a complicated exercise, but the result was a deviation from the Universal-Declaration language, since no references are made any longer to an explicit right to apostasy. The results of the compromises therefore seem somewhat paradoxical, in that they amount to maintaining control at the price of losing control. One may even say that Saudi Arabia regained what it had 'lost' in 1948.

The third analysis contained the views on this topic within academia. I argued that several renowned authors have adopted the view that the freedom to change religion or belief is clearly anchored within the current phrasing of the provision: the inclusive stance. These scholars did not consider the omission of the explicit freedom to change religion or belief to be substantial. To them it is merely a shift in verbiage. Fortunately, in academia, there are scholars who have adopted the exclusive stance: the freedom to change one's religion does not naturally follow from the currently chosen wording. The alteration of the provision is not merely a matter of semantic adjustment. Especially relevant is the argument that the actual attribution of the right to change religion can now come down to the discretion of the individual state.

In line with this stance, I argued that the consequence of the various compromises was conceptual ambiguity: the text is open to various interpretations. This seems to undermine the direct legal obligation for states, which was meant to be imposed with the adoption of the covenant. Altering the concepts and allowing various interpretations provides the opportunity for states to use a restrictive interpretation of the freedom of religion or belief, resulting in a narrow conception of the right. The scope of the provision is then dependent on the intention of the state, which means that the freedom of religion or belief may be applied in a variety of ways, resulting in legal inequality between the states. This does not only detract from the non-discriminatory content and the universality of the provision, but has resulted in a weakening of its normative force. By changing the wording in the provision, different normative contours have been asserted regarding the freedom of religion or belief, with the result that the explicit right to apostasy is disregarded.

A reassertion, or reconceptualisation, of the right to apostasy as part of the general right to freedom of religion or belief would seem necessary for an establishment (or re-establishment) of the normative contours of this right: a suggestion hereto was made. Although this suggestion can be used for future theoretical normative references, this seems rather unrealistic, considering the development of the freedom of religion or belief and the current political climate, which is discussed in the following chapter.