

Codes of conduct for religious persuasion: the legal framework and best practices

Matthew K Richards, Are L Svendsen, Rainer Bless*

Abstract

Attempts by people of faith to persuade others to their beliefs, while a protected human right, can spark conflicts in communities intent on protecting their privacy and identity. A possible solution lies in voluntary codes of conduct for missionary activities. Such codes are more likely than governmental regulations to prevent or resolve cross-cultural and inter-faith conflicts relating to religious persuasion. This article analyzes nineteen voluntary codes to identify which types have greatest potential for conflict-resolution. Effective codes are compatible with international law norms, respectful of multiple traditions, and addressed to a general audience. Codes drafted by intra-faith or ecumenical groups – while appropriate for the group’s internal purposes – are less likely to prevent or resolve cross-cultural or inter-faith conflicts and should not be viewed as universal standards by which to judge the missionary activities of all faiths.

Keywords Religious persuasion, codes of conduct, freedom of conscience, proselytism, right to manifest, mission, ecumenical, inter-faith, freedom of religion, freedom of belief.

* Dr Richards (*1970) holds a Juris Doctorate and practices law in the United States and is a fellow of the International Center for Law and Religion Studies at Brigham Young University (mrichards@kmclaw.com). Mr Svendsen (*1978) is a jurist in Norway and holds a Master of Law degree. He is a board member of both the Oslo Coalition on Freedom of Religion or Belief and the Council of Religious and Life Stance Communities in Norway (are@svendsen.com). Mr Bless (*1981), an Assessor iuris, practices law in Germany, having recently concluded a traineeship in the Freedoms & Justice Department of the European Union Agency for Fundamental Rights in Vienna, Austria. He equally is a fellow of the International Center for Law and Religion Studies at Brigham Young University (rainer.bless@googlemail.com). The opinions expressed are our own and do not necessarily reflect the views of any organization with which we are affiliated. We thank Prof W Cole Durham Jr, Prof Dr Dr Thomas Schirrmacher, and Erik Brinkerhoff for their invaluable insights and comments through various drafts. This article uses UK spelling. Corresponding author: Dr Matthew K. Richards, Kirton & McConie Attorneys at Law, 1800 Eagle Gate Tower, 60 East South Temple, Salt Lake City, Utah 84145-0120, Tel. +1(801) 321-4873, Email: mrichards@kmclaw.com.

1. Introduction

It is no secret that religious persuasion sparks controversy. Those who engage in religious persuasion often do so because they feel compelled by conscience. And fundamental human rights clearly protect the practice: The right of conscience, the right to “manifest” religion or belief through “teaching, practice, worship and observance”, and the right to free expression all secure the freedom to attempt to share deeply held beliefs with others.¹ However, from the perspective of communities targeted by mission activities, “[t]he proselytizer violates boundaries and disrupts traditions”.²

Proselytism can be mercenary and can exploit ignorance, poverty, and emotional loneliness. It can interrupt or damage existing family and social relationships and disrupt communities of faith. In states with historically dominant religious traditions, the arrival of foreign missionaries can trigger severe reactions within those traditions, sometimes with the support of the state.³

Moreover, rights protecting religious persuasion stand in conflict with countervailing rights, such as “the right to hold opinions without interference,” the right of indigenous peoples to protect their cultures from external forces, and a growing expectation of privacy.⁴

¹ Universal Declaration of Human Rights (adopted 10 December 1948) G.A. Res. 217A (III), Article 18 (UDHR); International Covenant on Civil and Political Rights (ICCPR) (adopted 16 December 1966, entered into force 23 March 1976) G.A. Res. 2200A (XXI), Articles 18 and 19; Declaration on the Elimination of all Forms of Discrimination Based on Religion and Belief (proclaimed 25 November 1981) G. A. Res. 36/55, Article 1. Notably, the freedom of conscience includes the right of a target to “change his religion or belief” or “to have or to adopt a religion or belief of his choice”.

² Martin E. Marty, ‘Proselytizers and Proselytizees on the Sharp Arête of Modernity’, in John Witte, Jr. & Richard C. Martin (eds), *Sharing the Book: Religious Perspectives on the Rights and Wrongs of Proselytism* (Orbis Books, London 1999) 2.

³ Thomas Farr, *World of Faith and Freedom* (OUP, USA 2008) 21-24.

⁴ ICCPR (n 2) Article 19.1; Declaration on the Rights of Indigenous Peoples (DRIP) (adopted by General Assembly Resolution 61/295 on 13 September 2007) <http://www.un.org/esa/socdev/unpfii/en/drip.html> (Accessed 26 October 2010); Joel A Nichols, ‘Mission, Evangelism, and Proselytism in Christianity: Mainline Conceptions as Reflected in Church Documents’ (1998) 12 *Emory Int’l L. Rev.* 563,565; Fernando Volio, ‘Legal Personality, Privacy and the Family’ in Louis Henkin (ed), *The International Bill of Rights: The Covenant of Civil and Political Rights* (Columbia University Press 1981) 190-193 (the

The tension that arises from competing rights and interests is not mere polemics, but can rise to violence. Sobering studies document the potential for conflict. In 126 of 198 countries (64%) evaluated in December 2009 by the Pew Forum on Religion and Public Life, public tensions among religious groups involved physical violence; in 49 countries (25%), private individuals or groups used force or threat of force to compel adherence to religious norms.⁵ Even more recently, sociologists Brian Grim and Roger Finke found that “violent religious persecution is pervasive. Of the 143 countries with populations of two million or more, between July 1, 2000, and June 30, 2007, 86 percent (123 countries) have documented cases of people being physically abused or displaced from their homes because of ... *religious persecution*.”⁶

This article analyzes nineteen voluntary ethical standards or codes of conduct for religious persuasion developed, at least in part, to address this tension. We assess the codes’ effectiveness for preventing or resolving conflicts.

We first note that voluntary codes of conduct are a viable alternative to governmental regulations, with even greater potential than government regulations to avert conflicts related to religious persuasion. Next, we sketch the boundaries set by international law, concluding that codes that violate these boundaries are ineffective for conflict-resolution. We then briefly compare and contrast the various codes of conduct, and outline best practices, gleaned from our analysis, that predict which codes are most likely to be effective. We highlight these best practices in recognition of a recent trend – as evidenced by the *Christian Witness in a Multi-Religious World: Recommendations for Guidelines* published in this volume and the *Recommended Ground Rules for Missionary Activities* produced in 2009 by the Oslo Coalition on Freedom of Religion or Belief – to call upon individual religious organizations and mission networks to draft their own internal ethics codes.⁷

zone of privacy “is a zone of freedom,” “a zone of isolation, a legal cloister for those qualities, wishes, projects, and life styles which each individual man, woman, or child wishes to enjoy or experience”).

⁵ Pew Forum, ‘Global Restrictions on Religion’ (Pew Forum) (17 December 2009) <http://tinyurl.com/6fd6etp> (Accessed 12 October 2010); see also *IJRF* 3 (2010) 33-46.

⁶ Brian J. Grim & Roger Finke, *The Price of Freedom Denied* (2011) 18.

Our central conclusion is that the most effective codes are rooted in international law, respect the missionary activities of multiple traditions, and address a general (rather than internal) audience. These codes are excellent tools for preventing or resolving conflicts relating to religious persuasion, as well as promoting the social wellbeing that derives from a robust religious freedom. Others – typically ecumenical codes – are not likely to be helpful for these ends because they are inwardly focused, may become cartel-like, and serve primarily as a form of advocacy to their own constituencies.

2. Voluntary codes of conduct as an alternative to governmental regulation of religious persuasion

Governments and private stakeholders alike have grappled with ways to resolve tensions related to religious persuasion. For most governments, the answer is regulation. Many of these governments consider religion and culture the exclusive domain of the state. Others use religion as a means to legitimize an undemocratic rule. Yet others, including some of those historically most protective of religious freedom, regulate the means and methods of “manifesting” or “expressing” religion or belief, in order to protect public safety, order, health, morals or other competing rights.

The result among states is a patchwork of regulations ranging from modest to severe, including excluding or restricting foreign missionaries,⁸ constraining the ability of minority religious groups to gather for worship,⁹ limiting use of media,¹⁰ and curtailing

⁷ The conclusions we discuss are based on research to be presented more comprehensively in a companion article to be published in a forthcoming issue of *Religion and Human Rights*.

⁸ *E.g.*, limiting the number, conditioning on stringent criteria, or denying visas at the whim of state officials (Mexico); restricting in-country travel or transfer from one ecclesiastical unit to another (Ukraine); and curtailing foreign participation in religious activities (Belarus, Azerbaijan).

⁹ *E.g.*, capping the size of gatherings (Eritrea), requiring prior state approval (Zambia), requiring meetings only at registered sites (China), or restricting the types of meeting that can be held (Zimbabwe).

¹⁰ In addition to restricting access to state-controlled media, states are developing ways to control new media technologies. Countries like China, Saudi Arabia, Egypt, Iran and Tunisia control internet content through surveillance, prosecutions, and extralegal threats and harassment; China, Iran and Tunisia

humanitarian aid or other charitable activities by religious organizations.¹¹ A significant number of countries – fully 38 percent of countries evaluated by the Pew Forum – have rigid laws that directly or indirectly prohibit religious persuasion.¹² Mauritania, for example, imposes the death sentence upon any Muslim who abandons his or her faith and does not repent within three days.¹³

But several handicaps inhibit any government's ability to craft regulations that account for differences among religious traditions and fairly balance competing human rights:

- Any balancing of rights is context-driven, requiring a flexible application to the particular facts;
- states lack expertise as to the motives and methods of religious persuasion;
- they have no basis on which to make religious judgements;
- regulations are inherently reactive;
- regulators often lack staff and funding and are limited in jurisdiction; and
- top-down regulations seldom motivate compliance by regulated individuals and groups, especially those for whom religious persuasion is compelled by conscience.¹⁴

have implemented systems to monitor and restrict internet content; and China filters mobile phone text messaging. China, Russia and Tunisia each hire commentators to actively guide or influence online discussions. Karin Deutsch Karlekar and Sarah G. Cook, 'Access and Control: A Growing Diversity of Threats to Internet Freedom' (Freedomhouse, 30 March 2009) <http://tinyurl.com/5w5jph5> Annual Report of the United States Commission on International Religious Freedom, May 2009 (2009 Report) www.uscirf.gov (Accessed 18 October 2010) 88.

¹¹ Gospel for Asia 'Crackdown on Churches in Myanmar' (24 February 2009) <http://tinyurl.com/6d2kb8> (Accessed 14 October 2010).

¹² See *Pew Forum* (n 6). The Pew Forum identifies 75 countries.

¹³ Tad Stahnke, 'Proselytism and the Freedom to Change Religion in International Human Rights Law' (2001) *BYU L Rev* 251, 283-84, 287.

¹⁴ Saule T. Omarova, 'New Paradigms for Financial Regulation in the United States and the European Union: Co-Sponsored by Brooklyn Law School Dennis J. Block Center for the Study of International Business Law: Rethinking the Future of Self-Regulation in the Financial Industry' (2010) 35 *Brooklyn J Int'l L* 665, 672-73 (discussing forms of self-regulation, like codes of conduct)

Much more concerning, the brunt of government restrictions invariably falls upon religious minorities, which can radicalize those minorities and potentially further exacerbate violence. In other words, protectionist state restrictions can spark, rather than quell, further conflict:

If the goal is to create more peaceful and rights-oriented societies, one group cannot have total control over the definition of culture and the amount of religio-legal integration in the State; to do so will inspire permanent division in society and perpetuate violent power struggles between groups as repressed minorities attempt to find a way to gain the respect they need and deserve.¹⁵

A state may succeed temporarily in clamping down on freedom of expression or choice, but a clampdown can drive proselytizing groups underground for a time, only to emerge later as even more divisive. To some religious minorities who feel backed into a corner, “violence [can seem] the only way to effectuate change in society” or to claim rights “already established under international law”.¹⁶ Conversely, state restrictions designed to protect dominant religions or ideologies can embolden the *dominant society* to aggression or violence against the minority.¹⁷ Brian Grim and Roger Finke describe this pattern as the “religious violence cycle,” which occurs as “social restrictions on religious freedom lead to government restrictions on religious freedom and the two act in tandem to increase the level of violence related to religion – which in turn cycles back and leads to even higher social and government restrictions on religion”.¹⁸

To the question of whether voluntary codes of conduct for religious persuasion adopted by religious communities, inter-faith

¹⁵ S I Strong, ‘Law and Religion in Israel and Iran: How the Integration of Secular and Spiritual Laws Affects Human Rights and the Potential for Violence’, 19 Mich J Int’l L (1997) 109,217; *Pew Forum* (n 6).

¹⁶ Strong (n 16) 110-13, 203, 215, 217.

¹⁷ Shima Baradaran-Robison, Brett G Scharffs & Elizabeth A Sewell, ‘Religious Monopolies and the Commodification of Religion’, 32 Pepp L Rev 885, 888, 936-37.

¹⁸ Brian J. Grim, ‘Religious Freedom: Good for What Ails Us?’ (2008) *Faith & Int’l Affairs*, 3 (describing the “religious violence cycle” <http://tinyurl.com/6g3b38t> (Accessed 12 October 2010)). See also Baradaran-Robison, Scharffs and Sewell (n 18) 930-31 (citing Derek H. Davis, ‘Religious Persecution in Today’s Germany: Old Habits Renewed,’ in *Religious Liberty in Northern Europe in the Twenty-First Century* (Derek H. Davis ed, 2000) 107, 110-12).

groups, mission networks or non-governmental organizations are a viable alternative to government regulation, we answer yes. “Self-regulation as a form of social organization has a long history, which can be traced back to religious fraternities and medieval merchant and trade guilds.”¹⁹ Just as voluntary codes of conduct help ensure professional ethics in law and medicine, promote social and environmental responsibility among corporations, maintain standards of truth and accuracy in advertising, encourage transparent operations in museums and nonprofits, govern the humanitarian responses by NGOs to natural disasters and conflicts, and bolster a variety of accreditation and certification schemes, codes of conduct can be an effective tool for regulating religious persuasion as well.

For a host of reasons, voluntary codes are better suited than government regulations to prevent or resolve cross-cultural and inter-faith conflicts relating to religious persuasion. First, missionary codes can set ethical standards of behaviour and performance that are adaptable, informed, targeted and context-appropriate. Self-regulation in general is more prompt, flexible, and effective than government regulation, and can bring to bear the accumulated judgment and experience of all stakeholders on an issue that is particularly difficult for the government to define with bright line rules.²⁰

Second, codes are inherently more efficient, less costly and less complicated than government regulation.²¹ Cooperation by NGOs, inter-faith groups, mission networks, individual religious organizations, and individual actors themselves allows for more rapid responses to developments affecting the balances of competing rights or the methods of religious persuasion, for instance, adapting to changing modes of communications.²²

¹⁹ *Omarova* (n 15) 671

²⁰ Robert Pitofsky, ‘Self Regulation and Antitrust’ (Remarks prepared for the D.C. Bar Association Symposium, Washington D.C., 18 February 2005) 1, 2 <http://www.ftc.gov/speeches/pitofsky/self4.shtm> accessed 11 November 2010.

²¹ *Omarova* (n 15) 674.

²² Brent D. Showalter, ‘Steroid Testing Policies in Professional Sports: Regulated by Congress or the Responsibility of the Leagues?’ (2007) 17 *Marq Sports L Rev* 651, 676-77.

Third, because these codes both stimulate and draw upon the internal morality of those engaged in religious persuasion,²³ they can minimize both the resistance that naturally follows top-down government regulation as well as the likelihood of conflict. Participating in the cooperative process fosters shared values for all stakeholders, regardless of worldview or relative political power. It legitimizes all voices and also cultivates a sense of ownership that facilitates voluntary compliance with the resulting standards.²⁴

The involvement of regulated firms in self-regulation is said to result in a higher level of compliance. Some of this is derived from the psychological “buy in” to regulation that they have had a hand in developing and for which they are responsible. Regulatory compliance is also likely to be higher where there is a clear understanding of both the rationale for regulation and the rules themselves. In a self-regulatory structure, the regulated firms are more likely to be conscious of the goals of regulation and be aware of its advantages ...²⁵

In contrast, “[s]ocial norm theorists have shown that individuals will ignore or attempt to circumvent efforts to influence their conduct when they consider those efforts illegitimate or philosophically inconsistent with their beliefs and values”.²⁶ This potential for collaborative “buy-in” represents perhaps the greatest advantage of the codes over governmental regulations for preventing or resolving conflicts, provided the circle of participants developing the code is sufficiently inclusive.

Fourth, voluntary codes invite higher levels of standards than a government could impose in keeping with established religious freedom rights. Religiously neutral government regulations cannot address some of the subtleties of religious behaviour. But, by not being bound by any set law, self-regulated organizations can tailor

²³ *Omarova* (n 15) 674.

²⁴ Center for Financial Market Integrity, ‘Self-Regulation in Today’s Securities Markets’ (2007) <http://www.cfapubs.org/doi/pdf/10.2469/ccb.v2007.n7.4819> (Accessed 11 November 2010), 5-6; *Omarova* (n 15) 674; *Showalter* (n 23) 676-77.

²⁵ Margot Priest, ‘The Privatization of Regulation: Five Models of Self-Regulation’ (1997-98) 29 *Ottawa L Rev* 233, 270; see also Gail. B. Agrawal, ‘Resuscitating Professionalism: Self-Regulation in the Medical Marketplace’ (2001) 66 *Mo L Rev* 341, 396.

²⁶ *Agrawal* (n 26) 393.

behaviour beyond what is merely legal, toward what is beneficial for all.²⁷

Fifth, accepting the missionary codes provides an opportunity to religious groups to establish or enhance their reputations for ethical conduct.²⁸ Acceptance represents a moral commitment that facilitates trust and credibility and may thereby enhance performance.²⁹ And sixth, precisely because religious groups care about their reputations,³⁰ the codes provide an important point of leverage on those groups. This happens in two ways. On the one hand, code drafters can be criticized if a code is limited in scope and coverage. Alternatively, those who ascribe to more meaningful codes are open to claims of hypocrisy if they fail to implement those standards.³¹

Detractors who dismiss voluntary compliance schemes as toothless underestimate the extent of the reputational benefits stakeholders can derive “from being able to show that they have complied with a code or standard”.³² This is particularly so among nonprofits, including religious organizations, that obtain their funding

²⁷ *Center for Financial Market Integrity* (n 25) 5-6.

²⁸ *Pitofsky* (n 21) at 1.

²⁹ *Agrawal* (n 26) 383-84; Alnoor Ebrahim, ‘Accountability in Practice: Mechanisms for NGOs’ (World Development, Vol. 31, No. 5, pp. 813-829, 2003) 819-21 <http://tinyurl.com/6kxpyvp> (Accessed 11 November 2010) (citing examples, such as the Code of Conduct for The International Red Cross and Red Crescent Movement and NGOs) 821.

³⁰ David Graham & Ngaire Woods, ‘Making Corporate Self-Regulation Effective in Developing Countries’ (World Development, Vol. 34 No. 5, pp 868-883, 2006) 870, 871-73 (“Risks to reputation are increasingly recognized as important”; providing multiple examples) <http://tinyurl.com/6312jru> (Accessed 11 November 2010).

³¹ Rhys Jenkins, ‘Corporate Codes of Conduct: Self Regulation in a Global Economy’ (United Nations Research Institute for Social Development, Programme Paper Number 2, April 2001), at iv <http://tinyurl.com/63ruo5d> (Accessed 11 November 2010) 28-29.

³² David Brereton, ‘The Role of Self-Regulation in Improving Corporate Social Performance: The Case of the Mining Industry’ (Presented to Australian Institute of Criminology Conference on Current Issues in Regulation: Enforcement and Compliance, Melbourne, September 2002) 14 http://www.csr.uq.edu.au/docs/brereton_2002_1.pdf (Accessed 11 November 2010); Mark Sidel, ‘The Guardians Guarding Themselves: A Comparative Perspective on Nonprofit Self-Regulation’ (2005) 80 Chi.-Kent L. Rev. 803, 829.

through donations or otherwise derive value from their public perception.³³

Finally, seventh, as discussed more fully below, the missionary codes of conduct can influence the interpretation of human rights norms, establish trends, and work cumulatively to reinforce ethical standards. Often, “the issue is not whether any particular scheme is or is not effective, but rather, the sum effect of all these schemes”: While codes may differ in detail, if they generally emphasize similar underlying principles they have an important reinforcing effect. “[T]he sheer weight of the message makes it difficult to ignore.”³⁴

Of course, there are limitations to the effectiveness of missionary codes of conduct. Besides enabling watchdogs to hold religious groups accountable to the public by publishing failures to abide or subscribe to the standards, the codes lack concrete enforcement mechanisms. And there is a danger, discussed below, that codes can become monopolistic, exclude or devalue minority religious groups, and thereby engender the same “religious violence cycle” that can result from aggressive state regulations. “[C]artel-like arrangements of self-regulatory bodies can work against the public interest” by limiting choice, hindering innovation, improperly skewing perceptions of new or unfamiliar religious practices, or distorting the balance of competing human rights.³⁵ As a whole, however, we can expect the codes to have the same potential for success as other voluntary codes in analogous circumstances. As one commentator said of corporate codes of conduct: “Notwithstanding the limitations of codes, they can and have generated positive benefits for stakeholders.”³⁶

In general, then, missionary codes of conduct are indeed a viable alternative to government regulation. Moreover, because they secure participants’ buy-in, harness reputational self-interests and can be adapted to context-specific applications, they also are better suited than state regulations to avert conflicts resulting from the clash of competing rights.

³³ *Sidel* (n 33) 829; *Graham and Woods* (n 31); *Agrawal* (n 26) 383-84.

³⁴ *Brereton* (n 33) 14; *Jenkins* (n 32) 28-29.

³⁵ *Priest* (n 26) 269.

³⁶ *Jenkins* (n 32) iv.

3. International law as the framework

For codes of conduct to be effective in helping resolve conflicts they must be legitimate across cultures in a pluralistic world. A key to legitimacy is compliance with accepted international law norms.³⁷ Universal human rights, backed by political commitments, provide a common platform for cross-cultural discussion. And while rights relating to religious persuasion are in tension, an effective code of conduct cannot trumpet certain rights to the exclusion of others, but must strike a balance or lose legitimacy in the minds of significant populations. Codes that are inconsistent with fundamental rights of religious freedom and expression are ultimately unhelpful to conflict resolution and, like aggressive state regulations, may in fact further exacerbate violence.³⁸ Therefore, before comparing the various existing codes, we emphasize that international law norms set a critical framework for effective codes.

To be sure, a particular religious institution or network may elect to take a “high road” and regulate (or curtail) its own mission activities beyond what is required by international law norms. Indeed, as noted, there is strong incentive for religious groups to self-police to avoid backlashes, enhance their reputation and build public trust. For the stability of their own communities, religious leaders naturally act to curb abuses and may voluntarily withdraw from even benign forms of religious persuasion, even when international law norms do not require a withdrawal.³⁹ Some religious communities act more aggressively in this regard than others, recognizing that missionary

³⁷ “In addition to its affinity to consensus, legitimacy is closely related to a number of other international norms.” Legitimacy is a composite of, and an accommodation between, legality, morality and constitutionality. Ian Clark, *Legitimacy in International Society*, 207 (OUP, New York 2007).

³⁸ “The norms-based view of why self-regulation might work relies on arguments about legitimacy and socialization. [Stakeholders] will abide by rules and norms regulating social and environmental conduct because [those norms] are perceived to be ‘legitimate’ and appropriate.” International law norms are “perceived as possessing legitimacy, ‘a property ... which itself exerts a pull toward compliance.’” *Graham and Woods* (n 31) 870 (citation omitted; ellipsis in original).

³⁹ See e.g. Marv Newell, ‘Is Evangelism Ever a Sin? Ethical Evangelism in a Watching World’ (CrossGlobal Link, June 2009) 2 (CrossGlobal Link, Is Evangelism Ever a Sin) <http://tinyurl.com/6xg4b9u> (Accessed 13 October 2010).

activities perceived to be culturally offensive or politically naïve can needlessly exacerbate religious persecution and lead to even tighter restrictions on religious persuasion.⁴⁰ Moreover, it is perfectly acceptable for a religious group to warn its flock against what it perceives as “wolves in sheep’s clothing.”

However, codes of this nature tend not to be helpful in preventing or resolving *cross-cultural* and *inter-faith* conflicts and should not be viewed as best practices or enforced as customary law incumbent *upon all confessions*. If advanced as universal guidelines by which to judge all those engaged in religious persuasion, such codes can (sometimes deceptively) skew general expectations about the exercise of fundamental rights, and, like aggressive state regulations, spur retaliations.⁴¹

3.1. Major international law instruments relating to religious persuasion

Numerous international covenants have been adopted relating to freedom of religion or belief. We focus on the major instruments cited most frequently by the international community in the field of public international law.⁴²

The *Universal Declaration of Human Rights* (“UDHR”), adopted by the United Nations General Assembly in 1948, provides in Article 18:

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.⁴³

⁴⁰ Robert Seiple, ‘From Bible Bombardment to Incarnational Evangelism’ (2009) 7 *Faith & Int’l Affairs* 29.

⁴¹ *Grim, Religious Freedom* (n 19) 5 (describing the “religious violence cycle”).

⁴² Other important instruments include the UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (1981), the Vienna Declaration and Programme of Action (1993), the Declaration of Principles on Tolerance (1995), Resolution adopted by the UN General Assembly 52/122 on Elimination of All Forms of Religious Intolerance (1998), and the American Convention on Human Rights (1969).

⁴³ The WCC’s Commission of the Churches on International Affairs urged the incorporation of article 18 into the UDHR. World Council of Churches (WCC), ‘Towards Common Witness’ 5 (WCC, Towards Common Witness) <http://tinyurl.com/6apmm6h> (Accessed 18 October 2010) 4, point 3.

While not legally binding in itself, the UDHR “reflect[s], to a large extent, customary law as recognized by a majority of the international community”.⁴⁴ Moreover, it has been the foundation for an array of national constitutions and legally binding international instruments, including the *International Covenant on Civil and Political Rights* (“ICCPR”).

The ICCPR has been ratified by 167 states and, like the UDHR, has influence even beyond those ratifying states as customary law.⁴⁵ Article 18(1-3) provides:

- 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.

The regional instruments with most global influence come from Europe, primarily because of the influence of the European Court of Human Rights. Two major instruments are the *Charter of Fundamental Rights of the European Union* (the “EU Charter”) and

⁴⁴ Natan Lerner, ‘Proselytism, Change of Religion, and International Human Rights’ (1998) *Emory Int’l L Rev*, 478, 556-57; Carolyn Evans, ‘Time for a Treaty? The Legal Sufficiency of the Declaration on the Elimination of All Forms of Intolerance and Discrimination’ (2007) 3 *BYU L. Rev.* 617, 627-36. As evidence of its ubiquity, the UDHR is one of the most frequently translated secular documents in the world in 370 languages and dialects. Office of the High Commissioner for Human Rights, ‘The Universal Declaration of Human Rights is the Most Universal Document in the World’ <http://www.ohchr.org/EN/UDHR/Pages/WorldRecord.aspx> (Accessed 13 October 2010). Of course, some states reject these international norms. See Felix Corley ‘The Former Soviet Union’ in Paul Marshall, ‘The Range of Religious Freedom’ in Paul Marshall (ed), *Religious Freedom in the World* (Rowman and Littlefield, Lanham 2007) 37, 41 (quoting a Kazakh jurist stating that “international agreements are nothing to us”).

⁴⁵ United Nations Treaty Collection, <http://tinyurl.com/6gcxdhc> (Accessed 13 October 2010)

the *Council of Europe's Convention for the Protection of Human Rights and Fundamental Freedoms*, also known as the *European Convention on Human Rights* ("European Convention").⁴⁶ The EU Charter was adopted by the three main European Union institutions (Council, Commission, and Parliament) in 2000, but came into force with the Treaty of Lisbon on 1 December 2009. Under the Treaty of Lisbon, the EU Charter has the status of European Community law and is legally binding on the Union, its institutions, and 27 member states as regards the implementation of Union law. The EU Charter's Article 10(1) says:

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

The European Convention applies to all 47 member states of the Council of Europe, including non-EU countries such as Russia and Turkey. Pursuant to its Article 9(1-2),

- 1) Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.
- 2) Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

Importantly, all of these provisions essentially mirror each other. They all enshrine an inviolable freedom of conscience and affirm the right to freedom of religion or belief, including the right to "manifest" religion or belief through teaching, practice, worship and observance.

⁴⁶ European Convention on Human Rights, 213 UNTS 222 (entered into force 3 September 1953) (European Convention).

⁴⁷ See *Kokkinakis v Greece* (App no 14307/88 (1993) ECHR 20, 11; UN Human Rights Committee, General Comment No. 22 (48) (Article 18), adopted by the UN Human Rights Committee on 20 July 1993, UN Doc CCPR/C/21/Rev.1/Add.4 (1993), reprinted in UN Doc HRI/GEN/1/Rev1 (1994), 35, 208 (UN Human Rights Committee) ("[T]o prepare and distribute

Similarly, both European compacts and the UDHR safeguard the right of a target of missionary activities to “change his religion or belief,”⁴⁸ and, while a source of controversy among Muslim states, the ICCPR protects the right “to have or to adopt a religion or belief of his choice.”⁴⁹ The UN Human Rights Committee interprets the freedom to “have or adopt” a religion or belief “necessarily [to] entail[] the freedom to choose a religion or belief, including, *inter alia*, 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.”⁵⁰

3.2 Key decisions of the European Court of Human Rights impacting freedom of religion or belief

The European Court of Human Rights oversees implementation of the European Convention, but the Court’s influence extends beyond Europe. Given the virtually identical language of all major human rights instruments with respect to the freedom of religion and belief, the reading of one instrument inevitably influences the interpretation of others. The European Court’s judgments, thus, acquire a universal dimension.⁵¹

The Court has addressed the issue of religious persuasion in three key cases, which we discuss next. These cases speak directly to the conflict of rights, and by authoritatively interpreting the relevant human rights norms, they map the outer boundaries within which the codes of conduct legitimately can self-regulate.

religious texts” is “integral to the conduct by religious groups of their basic affairs.”).

⁴⁸ UDHR, (n 2) Article 18.

⁴⁹ ICCPR, (n 2) Article 18; see also *Declaration on the Elimination of all Forms of Discrimination Based on Religion and Belief* (n 2). Notably, the language “to have or to adopt” in the ICCPR was a political compromise resulting from Islamic objections to explicit reference to a right to “change” one’s religion or belief. However, the compromise was balanced by Article 18 (2) in the ICCPR, which provides that “No one shall be subject to coercion which would impair his freedom to have or adopt a religion or belief of his choice,” which was intended to prevent coercive measures that would forestall conversion. See generally Paul Taylor, ‘Freedom of Religion: U.N. and European Human Rights Law and Practice’ (CUP, New York 2005).

⁵⁰ UN Human Rights Committee (n 48) para 5.

⁵¹ Lerner (n 45) 114 (discussing the impact of the *Kokkinakis* case).

3.2.1 *Kokkinakis v. Greece*

The first major case is *Kokkinakis v. Greece* (1993), which involved the prosecution by Greece of a Jehovah's Witness engaged in door-to-door canvassing.⁵² Mr. Kokkinakis had been arrested more than 60 times for "proselytism," and was once again convicted, this time for calling at the home of an Eastern Orthodox cantor. Greek law proscribed "proselytism," defined as "any direct or indirect attempt to intrude on the religious beliefs of a person of a different religious persuasion, with the aim of undermining those beliefs, either by any kind of inducement or promise of inducement or moral support or material assistance, or by fraudulent means or by taking advantage of his inexperience, trust, need, low intellect or naivety".⁵³

In overturning the conviction, the Court reiterated that the freedom of religion or belief includes the freedom to "manifest" one's religion:

While religious freedom is primarily a matter of individual conscience, it also implies, *inter alia*, freedom to "manifest [one's] religion." Bearing witness in words and deeds is bound up with the existence of religious convictions.

According to Article 9 [of the European Convention], freedom to manifest one's religion is not only exercisable in community with others, "in public" and within the circle of those whose faith one shares, but can also be asserted "alone" and "in private;" furthermore, it includes in principle the right to try to convince one's neighbour, for example through "teaching," failing which, moreover, "freedom to change [one's] religion or belief," enshrined in Article 9 (art. 9), would be likely to remain a dead letter.⁵⁴

The Court held that "it may be necessary to place restrictions on this freedom in order to reconcile the interests of the various groups and ensure that everyone's beliefs are respected,"⁵⁵ but concluded that government restrictions will only be consistent with the freedom of religion or belief as long as they do not hinder proper methods of religious persuasion.⁵⁶ In the particular case, while the Court did not elaborate on what would constitute improper missionary conduct, it

⁵² *Kokkinakis* (n 48).

⁵³ *Kokkinakis* (n 48) 16, 17.

⁵⁴ *Kokkinakis* (n 48) 31.

⁵⁵ *Kokkinakis* (n 48) 33.

⁵⁶ *Kokkinakis* (n 48) 48.

held that Mr. Kokkinakis did not use force or other improper methods.⁵⁷

3.2.2 *Larissis and Others v. Greece*

Larissis and Others v. Greece (1998) involved military officers convicted under the same anti-“proselytism” law at issue in *Kokkinakis* for sharing their Pentecostal faith with subordinates and civilians. The Court reiterated that the right to manifest necessarily includes the “right to try to convince one’s neighbour, for example through “teaching,”” but in contrast to *Kokkinakis* upheld the convictions for missionary activities directed toward military subordinates because of “the particular characteristics of military life and its effects on the situation of individual members of the armed forces”:⁵⁸

[T]he Court notes that the hierarchical structures which are a feature of life in the armed forces may colour every aspect of the relations between military personnel, making it difficult for a subordinate to rebuff the approaches of an individual of superior rank or to withdraw from a conversation initiated by him. Thus, what would in the civilian world be seen as an innocuous exchange of ideas which the recipient is free to accept or reject, may, within the confines of military life, be viewed as a form of harassment or the application of undue pressure in abuse of power. It must be emphasized that not every discussion about religion or other sensitive matters between individuals of unequal rank will fall within this category. Nonetheless, where the circumstances so require, States may be justified in taking special measures to protect the rights and freedoms of subordinate members of the armed forces.⁵⁹

Importantly, the convictions were “more preventative than punitive” because no penalties were enforceable unless the applicants reoffended within three years.⁶⁰

Emphasizing the importance to the Court’s decision of the unique characteristics of military life, the Court overturned the convictions with regard to civilian targets even though (1) the applicants told the civilians that they (the civilians) “were possessed by the devil” and “worshipped idols and demons,” (2) the applicants took advantage of

⁵⁷ *Kokkinakis* (n 48) 49, 50.

⁵⁸ *Larissis and Others v. Greece* (App no23372/94) ECHR 24 February 2008 45, 50.

⁵⁹ *Larissis* (n 59) 51.

⁶⁰ *Larissis* (n 59) 54.

both their apparent power over a “delirious” co-religionist (who was foaming at the mouth but became calm upon the applicants’ arrival) and the civilians’ “inexperience in religious matters” to importune the civilians to convert to the Pentecostal faith, and (3) one of the targets distressed by the breakdown of her marriage “developed psychological problems”.⁶¹

The Court finds it of decisive significance that the civilians whom the applicants attempted to convert were not subject to pressures and constraints of the same kind as the airmen.⁶²

3.2.3 *Nolan and K v. Russia*

In *Nolan and K v. Russia* (2009) the European Court of Human Rights addressed the question whether a missionary could be denied re-entry to Russia in connection with his exercise of the right to freedom of religion or belief. Russia’s Federal Security Service concluded that Mr. Nolan, a member of the Unification Church founded by Reverend Sun Myung Moon, presented a “threat to national security,” which Russia defined to include “the protection of its . . . spiritual and moral heritage” as well as “opposing the negative influence of foreign religious organisations and missionaries.”⁶³

The national security basis of Mr. Nolan’s exclusion restricted the evidence Russia could present; nonetheless, the Court held there was no evidence of any allegedly improper conduct by Mr. Nolan or others in the Unification Church apart from “spreading their doctrine and guiding their followers in the precepts of Rev. Moon’s spiritual movement,” which were primarily religious activities. Thus, in the absence of any objectionable non-religious conduct and in consideration of the general policy as to national security, the Court concluded that “the applicant’s banning from Russia was designed to repress the exercise of his right to freedom of religion and stifle the spreading of the teachings of the Unification Church”.⁶⁴

⁶¹ *Larissis* (n 59) 11, 12, 17, 19, 59.

⁶² *Larissis* (n 59) 59 (alterations in original).

⁶³ *Nolan and K v. Russia* (App no 2512/04) 2009, 12, 39 (quoting letter from Federal Security Service alleging that the Unification Church among other groups established a network to gather information about events in Russia, indoctrinate citizens and incite separatist tendencies: “Missionary organizations purposefully work towards implementing the goals set by certain Western circles” to undermine national identity).

⁶⁴ *Nolan* (n 64) 63-66.

In finding a violation, the Court reiterated that exceptions to the freedom of religion and belief listed in the international conventions must be narrowly interpreted, “for their enumeration is strictly exhaustive and their definition is necessarily restrictive”.⁶⁵ Moreover, the Court provided a discrete list of state aims that can justify exceptions – “the interests of public safety, the protection of public order, health or morals, and the protection of the rights and freedoms of others” – which list did not include “national security”.

3.4. Lessons from the cases

These cases are seminal on many fronts. First, underlying all the cases is a fundamental commitment to the sanctity of the freedom of thought, conscience and religion, which *Kokkinakis*, *Larissis* and *Nolan* all describe as “one of the foundations of a ‘democratic society’”:

It is, in its religious dimension, one of the most vital elements that go to make up the identity of believers and their conception of life, but it is also a precious asset for atheists, agnostics, sceptics and the unconcerned. The pluralism indissociable from a democratic society, which has been dearly won over the centuries, depends on it.⁶⁶

Indeed, the Court in *Nolan* cited precisely this basis to explain its restrictive reading of the list of permissible exceptions to the freedom of religion and belief:

Far from being an accidental omission, the non-inclusion of [national security as a ground for limitation under Article 9 of the European Convention] reflects the primordial importance of religious pluralism as “one of the foundations of a ‘democratic society’ within the meaning of the Convention” and the fact that a State cannot dictate what a person believes or take coercive steps to make him change his beliefs.⁶⁷

The international human rights instruments presuppose the universality and equality of the human spirit in the exercise of conscience. Recognizing this fact, the European Court of Human Rights promotes a robust marketplace of religious (and non-religious) ideas.⁶⁸ The ability to freely decide matters of conscience presumes unfettered access to a range of viewpoints. Missionaries offer a choice

⁶⁵ *Nolan* (n 64) 73.

⁶⁶ *Kokkinakis* (n 48) 36; *Larissis* (n 589 38; *Nolan* (n 64) 61; see also *Serif v. Greece* (App no 38178/97) ECHR 14 December 1999, 39.

⁶⁷ *Nolan* (n 64) 73 (citations omitted).

in the market. So, the same freedom of conscience that gives listeners the right to accept or reject ideas according to their beliefs gives missionaries the right to manifest their religious beliefs according to theirs.⁶⁹

Second, the cases illustrate the balance to be achieved among potentially competing human rights. In *Kokkinakis* and *Larissis*, Greece's aim in criminalizing "proselytism" was to protect the rights and freedoms of others, but the Court held that generalized notions of privacy yielded to the right to manifest religion (including "the right to try to convince one's neighbour") in the absence of a showing of improper conduct.⁷⁰ The right to manifest and the right to have or adopt a belief of one's choice are inextricably linked as aspects of the underlying freedom of conscience – a freedom that can never be abridged.⁷¹ According to the Court, the right to manifest can be limited only when the methods of religious persuasion are "improper" – that is, when the missionary's conduct "is not compatible with respect for freedom of thought, conscience or religion of others".⁷²

Third, while the Court in *Kokkinakis* declined to define "improper" conduct in the abstract, the cases begin to provide some general direction. Obviously, some limitations are appropriate and needed. The state – or religious institutions or networks themselves –

⁶⁸ Baradaran-Robison, Scharffs and Sewell argue that "religious pluralism vivifies religion and thus 'politically active religious citizens, and even those willing to support their favoured coercive laws on the basis of their parochial religious commitments, have a vested interest in refusing coercively to impose their favoured religious orthodoxy on a diverse population.' Citing numerous other scholars, [there is] a 'convergence of voices . . . in support of the claim that religious communities benefit from pluralism and thus from a political regime that protects the religious freedom from which pluralism ensues.'" (n 18) 931 (citing Christopher J. Eberle, *Religious Conviction in Liberal Politics* (2002) 26-27, 44-45, as well as examples).

⁶⁹ Kevin Seamus Hasson, *The Right to Be Wrong* (Encounter Books, New York 2005) 33.

⁷⁰ *Kokkinakis* (n 48) 49.

⁷¹ *Kokkinakis* (n 48) 33; ICCPR (n 2) article 18 (3).

⁷² *Kokkinakis* (n 48) 48-49. The negative freedom of religion is clearly violated by coercion and force, but it is questionable whether the simple manifestation of freedom of religion without coercion or force can ever violate this negative right; See Niraj Nathwani, 'Islamic Headscarves and Human Rights' (2007) *Netherlands Quarterly of Human Rights*, Vol 25 no 237.

are entitled to proscribe coercion and manipulation that overwhelm a target's freedom of choice, which the Court stated might include "the use of violence or brainwashing," "exerting improper pressure on people in distress or in need," and "offering of material or social advantage or the application of improper pressure with a view to gaining new members for a Church".⁷³

As *Larissis* makes clear, the state is also entitled to protect those, like military subordinates, whose ability to choose is diminished by their particular circumstances. Presumably, this rule would extend to others in formalized hierarchical relationships, incapacitated persons (e.g., minors in school) and captive audiences (e.g., inmates in prison). There are reasons to give a higher level of protection to particular groups than to society as a whole since those groups are more vulnerable to conversion attempts and might find it difficult to exercise freedom of thought, conscience and religion in the context of their surroundings.⁷⁴

Finally, the cases highlight the difficulty of defining boundaries. *Kokkinakis* in particular illustrates the controversy, discussed above with respect to differences in the codes, over what constitutes improper "coercion". In that case the missionary encounter lasted ten to fifteen minutes and consisted of Mr. Kokkinakis coming to the cantor's home, being admitted by the cantor's wife, reading from scripture, encouraging her to change her Orthodox beliefs, and then leaving when he concluded his message.⁷⁵ The majority opinion held there was no coercion in this essentially voluntary exchange, but dissenting judges strenuously disagreed, stating that Mr. Kokkinakis's conduct amounted to the "rape of the belief of others" and was "fanatic[al]," "coercive" and "unacceptable psychological techniques".⁷⁶ Both the Court's internal disagreement and the refusal to define generally applicable standards highlight the significant grey

⁷³ *Kokkinakis* (n 48) 48; *Larissis* (n 59) 45.

⁷⁴ *Nathwani* (n 73) 238; see also Barry Lynn, Marc D Stern, Oliver S Thomas (eds) *The Right to Religious Liberty* (Southern Illinois University Press, Carbondale 1995) 21-22.

⁷⁵ *Kokkinakis* (n 48) 7, 10.

⁷⁶ *Kokkinakis* (n 48) 38; *Lerner* (n 45) 553; Tad Stahnke, 'The Right to Engage in Religious Persuasion' in Tore Lindholm, W. Cole Durham jr., and Bahia G. Thazib-Lie (eds) *Facilitating Freedom of Religion or Belief: a Deskbook* (Martinus Nijhoff Publishers/Brill Academic, The Hague 2004) 635, 645-46.

zone that remains about the degree or kind of pressure needed to constitute “coercion”.⁷⁷

At a minimum, however, it is clear from *Larissis* (where missionaries berated civilians, took advantage of their weaknesses, and importuned them to convert) that in the absence of unusual circumstances (e.g., military hierarchy) the Court is reluctant to find coercion where the conduct does not unduly restrict his or her free choice.⁷⁸ Moreover, restrictions must be proportionate to the legitimate aims of the state and leave open ample, meaningful opportunities of manifestation.⁷⁹ According to the Court in another important case, a state may fear hostility among competing groups in society but the role of authorities is “not to remove the cause of tension by eliminating pluralism, but to ensure that the competing groups tolerate each other”.⁸⁰

3.5. Right to freedom of expression

Naturally, alleged violations of the right to manifest one’s religion or belief also raise questions about the freedom of expression since manifesting religion or belief through teaching necessarily includes expressing an opinion. The European Court of Human Rights, like the international instruments it interprets,⁸¹ has repeatedly underscored the high value of freedom of expression in various cases. For example, in *Feldek v. Slovakia*⁸² (2001) the Court stressed that

According to the Court’s case-law, freedom of expression constitutes one of the essential foundations of a democratic society and one of the

⁷⁷ *Lerner* (n 45) 526.

⁷⁸ *Larissis* (n 59) 59.

⁷⁹ *Kokkinakis* (n 48) 49; *Larissis* (n 59) 46; see also General comment (para 8) to the ICCPR (art 18). In assessing proportionality, “the Court must weigh the requirements of the protection of the rights and liberties of others against the conduct of which the application [stands] accused.” *Kokkinakis* (n 48) 47. The nature and severity of the punishment is relevant to this analysis. *Larissis* (n 59) 54.

⁸⁰ *Serif* (n 67) 53 (discussing tensions between Muslims and Christians and between Greece and Turkey).

⁸¹ See *European Convention* (n 47) Article 10 (1).

⁸² *Feldek v. Slovakia* (App no 29032/95) (2001) 72; see also *Handyside v. The United Kingdom* (App no 5493/72) ECHR 7 December 1976) judgment of 7 December 1976, Series A no 24, p 23, 49.

basic conditions for its progress and for each individual's self-fulfilment. Subject to paragraph 2 of Article 10 [of the European Convention], it is applicable not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb. Article 10 protects not only the substance of the ideas and information expressed, but also the form in which they are conveyed.

As with the freedom of religion or belief, states can prescribe laws that limit the freedom of expression only when certain enumerated exceptions "necessary in a democratic society" are satisfied and exceptions must be "construed strictly".⁸³

Just as a person can freely advocate his or her political views, there should not be any question about the right of believers to share their religious views. The protection of the right to free expression (both speech and press) should be the same regardless of speaker or subject. As the Council of the European Union emphasized in November 2009, the freedom of religion or belief is intrinsically linked to freedom of opinion and expression which is necessary to create pluralist, tolerant, broad-minded and democratic societies.⁸⁴

However, the European Court of Human Rights has not yet applied this jurisprudence in the context of religious persuasion. Rather, in cases raising both freedom of religion or belief and freedom of expression, the Court has so far declined to address alleged

⁸³ *European Convention* (n 47) Art.10 (2); *Feldek* (n 84) 72; however, "a certain margin of appreciation is generally available to the Contracting States when regulating freedom of expression in relation to matters liable to offend intimate personal convictions within the sphere of morals or, especially, religion." *Gündüz v. Turkey*, (App no 35071/97) ECHR 4 December 2003, 37, 51. *Gündüz* and the cases *Otto-Preminger-Institut v. Austria* (App no 13470/87) ECHR 20 September 1994, Series A no. 295-A, 49 and *Wingrove v. United Kingdom* (1997) 24 EHRR 1 (ECHR 1996-V, 25 November 1996), 52, affirm some limits on religious expressions based on the enumerated exceptions.

⁸⁴ Council conclusions on freedom of religion or belief, 2973rd General Affairs Council meeting, Brussels, 16 November 2009; *Cf. Capitol Square Review and Advisory Board v. Pinette*, 515 US 753, 760, 767 (1995) (plurality opinion) ("[F]ar from being a First Amendment orphan," religious speech "is as fully protected ... as secular private expression"; indeed, "religious speech [is not] simply as protected by the [United States] Constitution as other forms of private speech," but "receives preferential treatment" under the First Amendment").

violations of the freedom of expression when the matter could be decided solely under the freedom of religion or belief. Thus, while the freedom of expression remains a potent source of protection for missionary activities, it appears that the Court for now defers to a freedom of religion or belief analysis – balancing competing rights in furtherance of an immutable freedom of thought, conscience or religion.

3.6. The role of codes of conduct in relation to international law norms

While international instruments and jurisprudence fence the outer boundaries within which effective codes of conduct can self-regulate, there is still significant wilderness. Questions remain as to precisely which forms of religious persuasion are proper or improper, and much greater precision is needed in assessing what other rights can counterbalance the right to engage in religious persuasion. Effective codes of conduct can map these contours, as *Kokkinakis* itself illustrates.

Though *Kokkinakis* declined to define in the abstract what constitutes improper religious persuasion, the court cited in passing a 1956 report issued by the World Council of Churches that distinguished “improper proselytism” from “Christian witness,” and noted that the Greek law at issue in *Kokkinakis* appeared generally consistent with the report’s definitions.⁸⁵ Indeed, the concurring opinion of Judge Pettiti explicitly suggested the use of codes of conduct as tools to help “define any permissible limits of proselytism”: According to Judge Pettiti, codes can provide “positive material for giving effect to the Court’s judgment in the future and fully implementing the principle and standards of religious freedom”.

⁸⁶

Indeed, codes can elucidate a range of issues relating to religious persuasion where international law remains unresolved, such as what types of conduct constitutes coercion or manipulation; what groups (beyond military subordinates) need special protection to ensure their freedom of thought, conscience and religion; whether indigenous peoples are entitled to greater protection; how to reduce the risk of

⁸⁵ *Kokkinakis* (n 48) 48.

⁸⁶ *Kokkinakis* (n 48) 26.

offence to a target's religious sensibilities without unduly compromising the missionary's right to share his or her beliefs; what charitable activities and in what circumstances constitute improper inducements; and how internationally guaranteed rights interact with local customs.

But again, codes of conduct lose legitimacy if they venture beyond the boundaries set by international law and are no longer "compatible with respect for freedom of thought, conscience or religion".⁸⁷ If a code is biased or skewed, then a measure relying on that code would be biased or skewed as well. Implicitly recognizing this reality, all of the codes of conduct evaluated herein pay homage to fundamental human rights, and many specifically cite to the human rights supporting the right to engage in religious persuasion. Nonetheless, as discussed below, some codes contain provisions that are incompatible with those rights.

4. Comparison of the codes

The nineteen codes of conduct we evaluate were developed over a period of more than thirty years by many different groups. (See the Appendix for a list of codes analyzed.) Some codes were drafted collaboratively by parties from multiple worldviews ("*inter-faith codes*"); others were drafted by faiths or networks representing a single worldview ("*intra-faith codes*") or by non-governmental organizations ("*NGO codes*"). We find that the type of drafting body directly correlates with the purpose and audience of the code. The purpose and audience, in turn, bear significantly on the ultimate utility of the code in preventing and resolving conflicts. We also note important differences in the codes as to their rhetorical framework and their level of prescriptiveness.

4.1 The relationship between drafters and code effectiveness

While a forthcoming article will more fully detail our findings, we illustrate the direct relationship between drafter and ultimate effectiveness with three case studies that are each representative of several other codes. The first two studies exemplify codes drafted by NGOs and inter-faith groups. NGOs have a well-recognized role in

⁸⁷ Kokkinakis (n 48) 48-49.

facilitating self-regulatory schemes.⁸⁸ Inter-faith groups also naturally put aside distinctive dogmas to find a common ground.

Example 1: Oslo Coalition on Freedom of Religion or Belief,

Recommended Ground Rules for Missionary Activities

A 2007 academic conference in Norway discussed the philosophies and methods of “Christian and Muslim Mission”. Discussions highlighted the controversy that surrounds religious persuasion and prompted calls for a code of conduct to help reduce conflicts through increased awareness of human rights standards on religion or belief. The Oslo Coalition (an international network of representatives from religious and other life-stance communities, NGOs, international organizations and research institutes) undertook the challenge.⁸⁹

The resulting code, published in 2009, is founded upon international human rights, and proffers itself as a tool for balancing competing rights and interests relating to religious persuasion.⁹⁰ To highlight the importance of human rights, the Oslo Coalition also released a reference paper analyzing those rights: “The right to try to convince the other: Missionary activities and human rights”.⁹¹ Both code and paper call upon organizations and networks engaged in religious persuasion to reflect on their own conduct and consider the wider context, as defined by international conventions, when setting their internal standards.

⁸⁸ Tanja A. Borzel and Thomas Risse, ‘Public-Private Partnerships: Effective and Legitimate Tools of International Governance?’ (Prepared for the Edgar Grande/Louis W. Pauly (eds.), *Complex Sovereignty: On the Reconstitution of Political Authority in the 21st Century*, Berlin, Germany) 9 <http://tinyurl.com/6yhrjas> (Accessed 11 November 2010).

⁸⁹ Oslo Coalition, *Missionary Activities and Human Rights: Aims and Objectives* http://www.oslocoalition.org/mhr_aims.php (Accessed 6 March 2011).

⁹⁰ Oslo Coalition, *Missionary Activities and Human Rights’ Recommended Ground Rules for Missionary Activities (OC, Recommended Ground Rules)* <http://tinyurl.com/6d9z72l> (Accessed 18 October 2010) 373-74; *see* IJRF 3 (2010) 113-122.

⁹¹ *The Right to Try to Convince the Other: Missionary Activity and Human Rights* <http://tinyurl.com/65fl2j8> (Accessed 6 March 2011).

Example 2: Christian Muslim Forum, Ethical Guidelines for Christian and Muslim Witness in Britain

Since its beginning as a small group of Muslims and Christians responding to the Archbishop of Canterbury's 1997 call for more structured dialogue between Christians and Muslims, the Christian Muslim Forum has blossomed into a major inter-faith initiative in Britain. Among other areas of work, the Forum has tackled issues relating to religious persuasion. According to Dr Musharraf Hussain OBE, past Chair and Vice-Chair of the Christian Muslim Forum, the effort began in scepticism and mistrust, but ended in cooperation. Even the act of preparing a code produced a new sense of understanding and brotherhood.⁹² While acknowledging the deep faith commitments of both Christians and Muslims, the resulting code avoids expressing the “theology of Christian evangelism or Muslim Da’wah,” and aims to bridge “diverse attitudes and approaches amongst us which can be controversial and raise questions” to offer “guidelines for good practice” for “the common good”.⁹³

As Examples 1 and 2 demonstrate, both NGO and inter-faith codes address wide audiences and tend to accommodate unfamiliar traditions and methods of religious persuasion. As a result, these types of codes are likely to help reduce conflicts by promoting a peaceful plurality of religions and beliefs.

In stark contrast to the bridge-building aims of NGO and inter-faith codes, *intra*-faith or ecumenical codes have a distinctly insular focus: They tend to look inwardly to their own constituencies, and thus are typically less suitable for general application or to resolve cross-confessional conflicts. While these codes may be prepared collaboratively by many participants, all participants share a common worldview – usually mainline Christianity – and, far from promoting pluralism, their purpose is to unite constituents around a common, consensus-driven philosophy of mission.

⁹² Comments of Dr. Musharraf Hussain, OBE DL, at Oxford Conference on Law and Religion, 8 June 2010, at Oxford University, Balliol College.

⁹³ Christian Muslim Forum, ‘Ethical Guidelines for Christian and Muslim Witness in Britain’ (“ [W]e will accept people’s [religious] choices without resentment.”) (London, 24 June 2006) 1 (Christian Muslim Forum, Ethical Guidelines) <http://tinyurl.com/66ynf6j> (Accessed 16 March 2011).

**Example 3: World Council of Churches, Towards Common Witness –
a Call to Adopt Responsible Relationships in Mission and
to Renounce Proselytism**

Western missionaries descended upon Eastern Europe after the fall of the Soviet Union. Orthodox Christianity interpreted the missionary onslaught as an assault on Orthodoxy. In 1992 and again in 1996, patriarchs of the Armenian Orthodox Church

accused these foreign groups of unfairly “taking advantage of the principle of religious freedom,” lately enshrined in the new Armenian law on religious conscience. They explained that the Armenian Church was in a weakened condition and needed time to regain its strength after seventy years of Soviet rule. The patriarchs took umbrage at the notion that Armenia was a field ripe for proselytism. “Armenia is not a mission-field for Christian evangelism,” they insisted. It is not ‘a heathen world and therefore a field for mission work in the generally accepted meaning of this word.’” They “described the activities of Jehovah’s Witnesses, Pentecostals, Nazarenes, Mormons, and others as self-serving and ignorant of Armenian faith and culture. They spoke of proselytizing as “soul stealing,” the illicit conversion of Christians from one confession to another within an already Christianized nation. Their “purpose is not to provide spiritual care for already existing members or followers (factually non-existent); their clear aim consists in ‘winning’ adherents,” in gaining “converts.” . . . This activity is “a threat to Christian unity . . . and to national unity.”⁹⁴

As a result, in 1997 Orthodox clerics participated with the World Council of Churches in drafting a code whose goal was:

(1) to make churches and Christians aware of the bitter reality of proselytism today; (2) to call those involved in proselytism to recognize its disastrous effects on church unity, relationships among Christians and the credibility of the gospel and, therefore, to renounce it; and (3) to encourage the churches and mission agencies to avoid all forms of competition in mission and to commit themselves anew to witness in unity.⁹⁵

In the view of most (but not all) ecumenical codes, religious persuasion promotes discord and schism, and should be restrained. In some respects, these codes are like the bylaws of cartels that encourage conformity to a common vision and stifle competition from

⁹⁴ Vigen Guroian, ‘Evangelism and Mission in the Orthodox Tradition’ in *Witte and Martin, Sharing the Book* (n 3) 231, 231-34; see also *Farr* (n 4) 145.

⁹⁵ *WCC, Towards Common Witness* (n 44) 3.

in-fighting or new or unfamiliar voices.⁹⁶ They evidence the observation that “[e]stablished religions ... often act to curtail competition from new religious groups by preventing proselytism, restricting conversion, and putting up barriers that make it difficult for new religions to gain a foothold.”⁹⁷ These codes encourage agreements among the churches to define canonical territories and by implication marginalize groups that fail to live by their lofty standards.

As noted, intra-faith codes can be appropriate as means of regulating internal affairs, warning the faithful, or enhancing the faith’s reputation among those who hold similar views. But as illustrated by Example 3 they are not likely to be useful for resolving tensions with other faiths or worldviews that do not share their vision of unity. They also lack cross-cultural legitimacy because, by discouraging new or emerging voices or over-restricting mission activities, they curtail the marketplace of ideas that is so critical to the freedom of thought, conscience and religion. And, as with aggressive state restrictions, “the attempt to restrict fair religious competition results in more violence and conflict, not less.”⁹⁸

Importantly, while we have not yet analyzed the newly-released *Christian Witness in a Multi-Religious World: Recommendations for Guidelines* published in this volume, it appears that the World Council of Churches and its collaborators have realized the limitations of earlier codes that were highly suspicious of missionary activities and now better accept the reality of religious persuasion. Also, we note that two intra-faith codes included in our analysis were prepared by groups whose purposes differed diametrically from that of the code in Example 3. The drafters of both these codes are minority faiths evangelising in states where the dominant culture is highly sceptical of

⁹⁶ See Baradaran-Robison, Scharffs & Sewell (n 18) 930 (“[A] religious monopoly may become oppressive and with state aid stifle minority religions.”). To obtain the buy-in of minority religious groups a code of conduct cannot disproportionately benefit some stakeholders at the expense of others. *Center for Financial Market Integrity* (n 25) 19. “[C]artel-like arrangements of self-regulatory bodies can work against the public interest” in a multiple ways. *Priest* (n 26) 269.

⁹⁷ *Grim, Religious Freedom* (n 19) 5. The Pew Forum found that public tensions between religious groups were reported in the vast majority (87%) of countries between mid-2006 through mid-2008. See *Pew Forum* (n 6).

⁹⁸ *Grim, Religious Freedom* (n 19) 5.

religious persuasion.⁹⁹ Both codes aim to assuage concerns, and therefore, do not present the concerns illustrated by Example 3. These two codes evidence an important exception to the observation that intra-faith codes are less likely to be effective for conflict-resolution.

In summary, there are significant differences among the codes due to drafters, audience and purpose, and those differences largely predict a code's likely effectiveness in preventing or resolving conflicts. These differences highlight the importance when interpreting any code of assessing its scope and purpose to recognize inherent limitations.

4.2. Differences in the rhetorical framework and prescriptiveness of the codes

Other differences among the codes are in their rhetorical framework and prescriptiveness. Perhaps not surprisingly, codes focused on a faith's or network's own adherents are more likely to be founded on the faith's scripture than international human rights norms,¹⁰⁰ but a faith-specific framework alone can delegitimize the code for those of other worldviews. Moreover, our analysis reveals that while most NGO and inter-faith codes generally direct that those engaged in religious persuasion be fair, truthful and respectful of the feelings of targets, intra-faith codes are more likely to include sometimes stringent guidelines for what types of conduct are improper.

⁹⁹ Evangelical Fellowship of India, 'Statement on Mission Language,' (EFI, Statement on Mission Language) (1-3 June 2000) <http://www.ad2000.org/re00620.htm> 1; Christian Federation of Malaysia, 'An Affirmation of Christian Witness' (CFM, Affirmation of Christian Witness) (19 December 1996).

¹⁰⁰ See e.g. Conference of European Churches & Council of European Bishops' Conferences, 'Charta Oecumenica,' 3 (Charta Oecumenica) <http://tinyurl.com/6zszudr> (Accessed 18 October 2010) 2; World Vision, 'The Ministry Policy on Witness to Jesus Christ,' (Issued 14 September 2006) 3 (World Vision, Ministry Policy) <http://tinyurl.com/6dopklv> (Accessed 13 October 2010); CFM, *Affirmation on Christian Witness* (n 100); Anglican Communion Network for Inter Faith Concerns, 'Generous Love: The Truth of the Gospel and the Call to Dialogue, An Anglican Theology of Inter Faith Relations,' (containing the Anglican "ground rules for productive social life" in "religious plurality") (Anglican Consultative Council, London 2008) 1 (NIFCON, Generous Love) <http://tinyurl.com/6dlmgjb> (Accessed 18 October 2010).

Specifically, some codes (mainly intra-faith) describe certain conduct as inappropriate that other codes characterize as acceptable, with descriptions generally reflecting the drafting group's particular perspectives of mission. As examples:

- Two ecumenical codes characterize as a “scandal” “presenting one’s church or confession as ‘the *true* church’ and its teachings as ‘the *right* faith’”.¹⁰¹ This stance contrasts sharply with the Oslo Coalition’s recognition that “[m]aking truth claims is inherent in missionary activities”.¹⁰²
- Several codes denounce disparaging or even criticizing others’ beliefs.¹⁰³ Again this contrasts with the Oslo Coalition code, which provides: “In the interest of freedom of intellect, criticism of other religions cannot be prohibited, but should be limited to well-reasoned, persuasive critique and rational comparison between alternative faiths,” and “Hostility and ridicule are unacceptable, but well-reasoned, persuasive critique should never be so.”¹⁰⁴
- *Towards Common Witness* portrays some forms of house calls and media campaigns as coercive, whereas other codes endorse “door-to-door canvassing,” provided it “is done in ways that respect the right to privacy and are also acceptable according to local social norms”,¹⁰⁵ and the responsible use of media.¹⁰⁶

¹⁰¹ WCC, *Towards Common Witness* (n 44) 3-5; see also *Charta Oecumenica* (n 101) 2.

¹⁰² *OC, Recommended Ground Rules* (n 91) para 2.1.1.

¹⁰³ *WCC, Towards Common Witness* (n 44) 5; *CrossGlobal, Is Evangelism Ever a Sin?* (n 40) 3 (‘Evangelism is sin when it is insensitive to peoples’ feelings’); see also The Inter Faith Network for the United Kingdom ‘Building Good Relations with people of Different Faiths and Beliefs (1993) 2 (Inter Faith Network, Building Good Relations) <http://tinyurl.com/63f2oag> (Accessed 18 October 2010) 2; WCC & Pontifical Council for Interreligious Dialogue, ‘Report from Inter-Religious Consultation on Conversion: Assessing the Reality,’ (15 May 2006) 2 (WCC, *Assessing the Reality*) <http://tinyurl.com/5s8twcq> (Accessed 13 October 2010) 2; *Christian Muslim Forum, Ethical Guidelines* (n 90) 1; Global Connections, ‘Gracious Christian Responses to Muslims in Britain Today,’ 2 <http://tinyurl.com/6gaeed3> (Accessed 18 October 2010) 2.

¹⁰⁴ *OC, Recommended Ground Rules* (n 91) 375.

¹⁰⁵ *OC, Recommended Ground Rules* (n 91) 375.

¹⁰⁶ ‘Code of conduct for Danish Missionary Council’ (Dansk Missionsraad), *International Review of Mission* (2007) 371-376, 372 <http://tinyurl.com/6d9z721>

- And a number of codes direct cultural sensitivity and respect for local traditions;¹⁰⁷ however, others are unbending in their commitment to the right to manifest religion through teaching, and indeed, support undercover or extralegal missionary activities when necessary.¹⁰⁸

We note that all these highlighted limitations on religious persuasion are to a degree inconsistent with international law. As discussed above, the European Court of Human Rights cases outline the degree and type of pressure needed to constitute “coercion.” Door-to-door canvassing was not coercive in *Kokkinakis* because the visit was essentially voluntary. Likewise, *Larissis* overturned the conviction of Pentecostal military officers who (1) berated their civilian targets, (2) criticized Orthodox Christian beliefs, and (3) importuned the civilians to convert at a time when they were particularly vulnerable. “The Court finds it of decisive significance that the civilians whom the applicants attempted to convert were not subject to pressures and constraints of the same kind as the airmen.”¹⁰⁹ Further, the cases recognize a baseline, as the Oslo Coalition Code recognizes, that claims of truth and criticism of other religions cannot be prohibited.¹¹⁰ As stated in *Kokkinakis*, the right to manifest may be limited only when missionary activities are “not compatible with respect for freedom of thought, conscience or religion of others.”¹¹¹

Of course, the international compacts and European Court of Human Rights cases recognize a need to balance competing human rights, and significant grey zones remain. As the right of privacy expands to prevent any intrusions into the private sector, it

(Accessed 18 October 2010); Norwegian Council for Mission and Evangelism (NORME, Codes of Conduct) 3 (Oslo, March 1 2001) <http://norme.no/om-norme/vedtekter/> (Accessed 18 October 2010).

¹⁰⁷ *Cross Global, Is Evangelism Ever a Sin?* (n 40) 3; *World Vision, Ministry Policy* (n 101), para 23; *NORME, Codes of Conduct* (n 107) 1-2; *Dansk Missionsraad* (n 107) 371; *EFI, Statement on Mission Language* (n 100).

¹⁰⁸ *NIFCON, Generous Love* (n 101) 10; The Lausanne Covenant (Lausanne, Switzerland 1974) 7 para 13 (Lausanne Covenant) <http://tinyurl.com/63w57up> (Accessed 23 September 2010); *OC, Recommended Ground Rules* (n 91) 375, para 2.1.2.

¹⁰⁹ *Larissis* (n 59) 59 (alterations in original).

¹¹⁰ *OC, Recommended Ground Rules* (n 91) 5 (emphasis added).

¹¹¹ *Kokkinakis* (n 48) 48-49.

increasingly threatens to limit traditional missionary methods. It may come to embrace the right to maintain one's own opinions without interference – a right to be left alone and, in the Buddhist tradition, to pursue the quest for harmony.¹¹² Other rights (e.g., the right of indigenous peoples to preserve their cultures) have a similar impact. Yet, *Kokkinakis* clarifies that, in the absence of a showing of coercion or manipulation, the balance ought to favour the right to manifest and the right to have or adopt a belief of one's choice, as aspects of the inalienable freedom of conscience.¹¹³

In particular, for instance, a number of European Court of Human Rights cases have affirmed the ability of states to restrict “expressions that seek to spread, incite or justify hatred based on intolerance, including religious intolerance,” because “expressions that seek to spread, incite or justify hatred based on intolerance, including religious intolerance, do not enjoy the protection afforded by Article 10 of the Convention.”¹¹⁴ Preserving one's “freedom from injury to religious feelings” (the infliction of which is criminalized in Austria) and prohibiting blasphemy (as in the United Kingdom and Iran) have been upheld as sufficient basis for restrictions on religious expressions.¹¹⁵ However, an offence must be more than eggshell sensitivity. Undergirding the Court's jurisprudence is the bedrock principle that liberty can be limited only if its exercise harms others: Being offended is different from being harmed, and harm should be established objectively.¹¹⁶ As UN Special Rapporteurs on Freedom of Religion or Belief and on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance stated in a Joint Report, “the right to freedom of religion or belief, as enshrined in relevant international legal standards, does not include the right to

¹¹² *Stahnke* (n 14) 280 (footnotes omitted); *Lerner* (n 45) 484-85 (discussing Articles 17 and 19(1) of the ICCPR and Article 12 of the Universal Declaration).

¹¹³ *Kokkinakis* (n 48) 33.

¹¹⁴ *Gündüz* (n 84) 37, 51; see also *Otto-Preminger-Institut* (n 84) 18-19, 49; *Wingrove* (n 84) 1956, 52.

¹¹⁵ See *Stahnke* (n 14) 290-99, 307-28 (listing interests and providing examples from Malaysia, China, Ukraine, India, and Western Europe); see also Niraj Nathwani, ‘Religious Cartoons and Human Rights’ (2008) EHRLR Issue 4, 495.

¹¹⁶ See John Stuart Mill, *On Liberty*, (1859), (Penguin Classics, London, 1985) 76.

have a religion or belief that is free from criticism or ridicule”.¹¹⁷ Effective codes of conduct can discourage hostility, ridicule, unfair comparisons or dishonesty, but in the end may not preclude a missionary from sharing his or her faith, including making comparisons with other faiths, because the teachings might offend.

In short, perhaps predictably, the codes that tend to violate international law norms are the same codes (e.g., Example 3: *Towards Common Witness*) whose drafters and purpose make them less effective for cross-cultural and inter-faith conflict resolution. The intra-faith codes (especially the ecumenical codes) – grounded in their faith’s own dogma instead of international law norms – tend to overly restrict missionary activities without regard to international guarantees of rights. By contrast, the NGO and inter-faith codes are much more likely to both rely on and comply with these norms.

5. Best practices

Based on the foregoing, we turn to the practices most likely to result in effective codes of conduct. Again, for purposes of this article, we measure effectiveness in terms of likelihood to prevent or resolve conflicts relating to religious persuasion.

5.1. Inclusivity of drafting committees

Given the direct correlation of NGO and inter-faith codes with effectiveness, it is an obvious best practice that codes should be drafted by representatives from multiple worldviews. Not only are the tone and content of inclusive codes most likely to balance the interests of multiple traditions, they are also most likely to secure the voluntary buy-in of otherwise competing stakeholders, promoting voluntary compliance. As the Christian Muslim Forum case study illustrates

¹¹⁷ Asma Jahangir, the Special Rapporteur on Freedom of Religion or Belief, and Doudou Diene, the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance, Joint Report, UN Doc A/HRC/2/3 (20 September 2006), para 36. Similarly, the UN Special Rapporteur on the Right to Freedom of Opinion and Expression concluded that charges of “insulting Islam” brought by Iranian courts “‘lack any objective criteria’ and are open to ‘subjective and arbitrary interpretation by judges interpreting them.’” *2009 Report* (n 11) 36.

(Example 2 above) even the act of drafting a code can result in understanding and respect among different groups.

5.2. Consideration of the impact of the code on multiple worldviews

Even if a single faith or mission network prepares a code, addressing a general (rather than parochial) audience increases the likelihood of effectiveness. Drafters should consider the impact of their code on other communities (including minority groups), avoid provocative language or a one-sided view of the rights (or wrongs) of mission, and anticipate possible controversies. Regulation of religious choices according to a single worldview risks delegitimizing the codes in the minds of significant populations. If promoted as universal best practices, as opposed to house rules for the particular confession, internally focused codes like aggressive state restrictions can perpetuate the religious violence cycle by marginalizing minority voices.

5.3. Recognition and affirmation of human rights

Effective codes of conduct expressly affirm the fundamental human rights relevant to religious persuasion, recognizing that these rights transcend culture or confession. In contrast, basing a code exclusively on a faith's own scripture risks alienating those of other worldviews (including those with different interpretations of the cited scripture) because an assertion grounded on one's understanding of the commands of God

convinces only those who share the insight itself. It's positively hopeless against . . . people who have no doubt that God's will is something completely different. In fact, it seems almost self-defeating: it likely will fail to convince the very "paganish" and the "antichristian consciences" it is destined to attract.¹¹⁸

5.4. Avoidance of over-prescriptiveness

An attempt to itemize every missionary activity that offends, like any needle-threading exercise, invites conflicts with international law and risks undermining the code's legitimacy. Effective codes of conduct tend to be more general in aspiration, avoiding specific limitations that

¹¹⁸ *Hasson* (n 70) 64.

could be construed to violate the boundaries established by international compacts and jurisprudence.

5.5. Focus on the grey areas of international law

In defining certain forms of religious persuasion as proper or improper, drafters should focus on issues where international law is unresolved. In this way, the code helps balance competing interests while preserving fundamental freedoms. Questions ripe for interpretation are listed above.

Codes can also suggest time, place or manner guidelines for missionary activities that do not materially impact the marketplace of ideas but minimize conflicts among those of different views, for example, abstaining from distributing literature in the vicinity of others' places of worship or at their religious festivals or celebrations;¹¹⁹ being honest about beliefs and allegiances and straightforward about intentions;¹²⁰ respecting the rights of parents and local laws regarding the age of maturity;¹²¹ entering a person's home only at the person's convenience and welcome;¹²² and safeguarding all personal information or addresses as required by data privacy rules.¹²³

5.6. Draft with openness toward yet-developing norms

As Judge Pettiti noted in *Kokkinakis*, codes of conduct have the potential to help states and international actors interpret fundamental rights, many of which are still developing. Drafters of codes should recognize this potential. Indeed, religious issues are increasingly critical to national and foreign affairs and diplomacy.¹²⁴ At least one diplomat has called for greater engagement by NGOs and faith-based groups to enable states to

¹¹⁹ *CFM, Affirmation of Christian Witness* (n 100) 2.

¹²⁰ *Inter Faith Network, Building Good Relations* (n 104) 2; *see also WCC, Assessing the Reality* (n 104) 2; *CFM, Affirmation of Christian Witness* (n 100) 2; *OC, Recommended Ground Rules* (n 91) 5, 6; *Lausanne Covenant* (n 109) 1; *NORME, Codes of Conduct* (n 107) 3; *Christian Muslim Forum* (n 94); *Dansk Missionsraad* (n 107) 372.

¹²¹ *OC, Recommended Ground Rules* (n 91) 6-7; *Christian-Muslim Forum* (n 94); *WCC, Assessing the Reality* (n 104) 3.

¹²² *CFM, Affirmation on Christian Witness* (n 100) 2; *OC, Recommended Ground Rules* (n 91) 5.

¹²³ *Dansk Missionsraad* (n 107) 372; *NORME, Codes of Conduct* (n 107) 3.

¹²⁴ *Farr* (n 4) 35 (quoting various authors).

“anticipate events rather than merely respond to them” and “think more expansively about the role of religion in foreign policy and about their own need for expertise,” emphasizing that the concerted efforts of these groups are much more likely to succeed “in fostering reconciliation” than those of any government.¹²⁵

5.7. Promotion of the benefits of an open religious marketplace

Codes of conduct that are compatible with international law, respectful of the missionary activities of multiple traditions and address a general audience not only aid in the implementation of international law, but can promote significant social benefits that derive from religious freedom. In contrast to the “religious violence cycle” perpetuated by close restrictions on missionary activities, Brian Grim and Roger Finke describe the “religious freedom cycle” that flows from preserving a robust marketplace of ideas and allowing “religious competition”. According to Grim and Finke, there is not only a statistical *correlation* of religious freedom with better social outcomes, but a demonstrated *causal* relationship: “A growing body of research supports the proposition that the religious competition inherent in religious freedom results in increased religious participation; and religious participation in turn can lead to a wide variety of positive social and political outcomes,” including fewer incidents of armed conflict, better health outcomes, higher levels of literacy and earned income, better educational opportunities for women, and higher overall human development.¹²⁶

¹²⁵ Madeleine Albright, ‘Faith and Diplomacy’ (2006) 4 Faith & Int’l Affairs 3, 4, 8; see also Marshall (n 45) 11 (noting the rising profile of religion in international affairs); Farr (n 4) 9. The codes offer the hope of success achieved collaboratively by faith-based groups and NGOs in crafting the ‘South African Charter of Religious Rights and Freedoms’ <http://academic.sun.ac.za/theology/religious-charter/> (Accessed 16 March 2011). The Charter, presented for public endorsement in October 2010, asks the South African government to enact further protections of that fundamental right pursuant to a process allowed by the country’s constitution.

¹²⁶ Grim, *Religious Freedom* (n 19) 4-5 (footnotes omitted); see also Marshall (n 45) 42, 43; Brian J. Grim & Roger Finke, ‘Religious Persecution in Cross-National Context: Clashing Civilizations or Regulated Religious Economies?’ (2007) 72 Am Sociological Rev 633, 636.

5.8. Honesty in scope

Finally, if a code aims primarily to address a faith's or network's own constituents, drafters should be honest about that purpose and scope, and should not advance the code (or adopt language that would allow it to be interpreted) as something more or different than it is. It is dishonest to trumpet such a code as a tool for cross-cultural conflict resolution.

6. Conclusion

What makes successful codes powerful is that they express universal rights that are grounded in the human experience and not dependent on any one cultural or religious frame of reference. They advance an energized, inclusive pluralism that integrates all members of society,¹²⁷ provide a platform for cross-cultural dialogue and diplomacy, motivate voluntary compliance, and set appropriate expectations with regard to missionary activities. For all the reasons discussed above, we conclude that codes of conduct are effective tools for preventing or resolving cross-cultural and inter-faith conflicts relating to religious persuasion when the codes are compatible with international law, respectful of the missionary activities of multiple traditions and address a general audience. These codes promote a robust pluralism necessary to freedom of religion and belief, and indeed, to democracy. By contrast, codes of conduct that are inwardly focused on a faith's or network's own constituency – while perhaps useful for other purposes – tend not to be helpful for preventing or resolving conflicts because they tend to advocate a particular worldview, are sectarian rather than neutral, and sometimes fail to conform to international law.

¹²⁷ Ensuring fair competition for all religions within a society “results in a rich pluralism where no single religion can monopolize religious activity, and all religions can compete on a level playing field.” *Grim, Religious Freedom* (n 19); see also J. Clifford Wallace, ‘Challenges and Opportunities Facing Religious Freedom in the Public Square’ (2005) *BYU L Rev* 597.

Appendix

Nongovernmental Organizations	
➤ <i>Recommended Ground Rules for Missionary Activities</i> , the Oslo Coalition (2009)	➤ Guiding Principles for the Responsible Dissemination of Religion or Belief, International Religious Liberty Association (2000)
Single-Faith and Ecumenical (Intra-faith)	
<ul style="list-style-type: none"> ➤ <i>Is Evangelism Ever a Sin? Ethical Evangelism in a Watching World</i>, CrossGlobal Link (2009)* ➤ <i>Generous Love: The Truth of the Gospel and the Call to Dialogue. An Anglican Theology of Inter Faith Relations</i>, Anglican Communion Network for Inter Faith Concerns (2008) ➤ <i>Gracious Christian Responses to Muslims in Britain Today</i>, unidentified Christians involved in ministry to Muslims (2008) ➤ <i>Ministry Policy on Witness to Jesus Christ</i>, World Vision (2006) ➤ <i>Codes of Conduct – for Norwegian Mission Organisations with international involvement</i>, Norwegian Council for Mission and Evangelism (2005) 	<ul style="list-style-type: none"> ➤ <i>Ecumenical considerations for dialogue and relations with people of other religions</i>, World Council of Churches (2004) ➤ <i>Code of Conduct for The Danish Mission Council (Dansk Missionsraad)</i>, The Danish Mission Council (2003) ➤ <i>Charta Oecumenica</i>, Conference of European Churches and the Council of European Bishops' Conferences (2001) ➤ <i>Statement on Mission Language</i>, The Evangelical Fellowship of India (2000) ➤ <i>Towards common witness – A call to adopt responsible relationships in mission and to renounce proselytism</i>, World Council of Churches (1997) ➤ <i>An Affirmation of Christian Witness</i>, Christian Federation of Malaysia (1996) ➤ <i>The Lausanne Covenant, International Congress on World Evangelization (1974)**</i>
Inter-faith	
<ul style="list-style-type: none"> ➤ <i>Ethical Guidelines for Christian and Muslim Witness in Britain</i>, Christian Muslim Forum (2009) ➤ <i>Joint Declaration on the Freedom of Religion and the Right to Conversion</i>, Islamic Council of Norway and the Church of Norway Council on Ecumenical and International Relations (2007) 	<ul style="list-style-type: none"> ➤ <i>Report from inter-religious consultation on "Conversion: Assessing the Reality"</i>, World Council of Churches & Pontifical Council for Interreligious Dialogue (2006) ➤ <i>Striving Together in Dialogue, A Muslim-Christian Call to Reflection and Action</i>, World Council of Churches (2000) ➤ <i>Building Good Relations with People of Different Faiths</i>, The Inter Faith Network for the United Kingdom (1993)

*Some debate whether this document constitutes a code of conduct, as it was not adopted as an authoritative document by delegates of the network's members but published informally by its leaders. We include it in this study because it expresses at least the leaders' view

regarding the propriety of mission activities.

**The Third Lausanne Congress on World Evangelization in October 2010 produced the Cape Town Covenant (www.lausanne.org/ctcommitment), which reaffirms a commitment to “make the gospel known among every people and culture everywhere”. <http://www.lausanne.org/ctcommitment#p1-7> (Accessed 16 March 2011). “We renew the commitment that has inspired The Lausanne Movement from its beginning, to use every means possible to reach all peoples with the gospel.” *Id.* We have not separately evaluated the Cape Town Commitment for purposes of this article.