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Islamic Law in Iran: Can It Protect the International Legal Right of Freedom of Religion and Belief?

Jennifer F. Cohen*

[D]ifferences among civilizations are not only real; they are basic. Civilizations are differentiated from each other by history, language, culture, tradition and, most important, religion. The people of different civilizations have different views on the relations between God and man, the individual and the group, the citizen and the state, parents and children, husband and wife, as well as differing views of the relative importance of rights and responsibilities, liberty and authority, equality and hierarchy. These differences are the product of centuries. They will not soon disappear.¹

Is he then who is a believer like him who is a transgressor? They are not equal.²

Differences among civilizations are a critical consideration in the development and enforcement of public international law. As “non-Western” countries gain a more sophisticated and influential presence in the UN and other intergovernmental bodies, these bodies are forced to reconcile their historic and elemental positions with those of member states that may have fundamental differences in their views of governmental power, human rights, and the role of international authority.

Religion is one area of particular interest because of its divisive implications for major players on the world stage. Religious beliefs inform the moral frameworks of many of the world’s most prominent policymakers. Whereas some nations are self-consciously religious in their policymaking, others, though potentially equally as informed in their moral structures by religion, claim to be

¹ Samuel Huntington, The Clash of Civilizations, 72(3) Foreign Aff 22, 25 (Summer 1993).
secular in their statehood. Though the world is becoming more fragmented by ideology, it is also better connected through technology, and it is the role of legal scholars and policymakers to determine whether the maintenance of an international collaborative government body really is feasible in all areas of law.

This Development explores the potential for compatibility between Islamic Law and human rights—in particular the freedom of religion and belief. As manifestations of Qur'anic law are as diverse as interpretations of “Western” liberal law, this Development focuses on Iranian Qur'anic law with only brief mentions of the implications of Islamic law for other countries. Though the Iranian interpretation of Islamic law is by no means representative of all Islamic nations, because of its conservative nature, it can serve as a benchmark in the analysis of other governmental systems.

Section I outlines the relevant international law, namely Article 18 of the International Covenant on Civil and Political Rights (“Covenant”). It includes a discussion of the UN's official interpretation of the Covenant and identifies potential differences in interpretation of the Covenant by Muslim nations. Section II outlines Iranian law, including a sketch of the pertinent portions of the Iranian Constitution, its governmental interpretation, and the tools utilized in this interpretation. Section III analyzes how the Iranian Constitution conflicts with the Covenant. Section IV concludes by discussing the potential implications of this conflict.

Ultimately this Development finds an inherent incompatibility between Iranian Islamic Law and what might be called “Western-based” international law. Phrased differently, the Constitution of the Islamic Republic of Iran, both explicitly and as interpreted by the Iranian government, inherently violates the UN’s commitment to protect freedom of religion and belief, a commitment that as a member state it has agreed to uphold. Unless the Islamic Republic of Iran undergoes a regime change or a significant evolution of either theological or political belief, it will be unable to comply with the Covenant and the subsequent UN mandates requiring the modification of national policies. The specific examples of Iran's violations that are explored in this Development are symptomatic of its general administrative policy as opposed to freestanding events or deviations from the norm. Therefore, the incompatibility between

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3 Compare Sau Arab Const, art 1 with US Const, amend I.
4 For this reason, the conclusions of this Development cannot be generalized to other Islamic countries without further research.
5 International Covenant on Civil and Political Rights (1966), 6 ILM 368 (1967) (“Covenant”). Note that Article 18 of the Covenant on Civil and Political Rights will be referred to as the “Covenant.” All other articles will be specifically referenced.
Iranian law and UN human rights law is an issue that should particularly concern the international community.

I. THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

The International Covenant on Civil and Political Rights was adopted and opened for signature, ratification, and accession in December 1966, was ratified by Iran in June 1975, and entered into force in March 1976. As of January 2008, it had been ratified by 161 nations. Though the government of Iran in power at the time of the ratification was overthrown in the Islamic Revolution of 1979, the Islamic Republic of Iran, the signatory's successor state, has at no point revoked its ratification of the treaty, nor has it made any official declarations or reservations about any of its clauses. Thus, the Islamic Republic of Iran remains fully bound by the terms of the International Covenant on Civil and Political Rights.

A. TEXT OF THE COVENANT

Article 2 of the International Covenant on Civil and Political Rights states that each State party to it will respect and ensure the various rights in the Covenant, through legislative and/or judicial means, to all individuals within its territory without distinction of any kind “such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” The particular right at issue in this Development is that of freedom of religion and belief. Article 18 of the Covenant states that:

(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.


See Vienna Convention on Succession of States in Respect of Treaties (1978), 17 ILM 1488.

International Covenant on Civil and Political Rights (1966), art 2, 6 ILM 368 (1967).
(3) Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

(4) The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.  

In order to accommodate countries of different structural backgrounds, the UN Human Rights Committee has emphasized that theocratic governments do not automatically violate the Covenant as a result of promoting a particular state religion. Even so, in its interpretation of the Covenant, the UN Human Rights Committee has asserted that:

The fact that a religion is recognized as a State religion or that it is established as official or traditional or that its followers comprise the majority of the population, shall not result in any impairment of the enjoyment of any of the rights under the Covenant, including article[ ] 18 . . ., nor in any discrimination against adherents to other religions or non-believers.

Thus, though a theocratic government does not automatically violate the Covenant, it is subject to the same standards of conduct as countries with secular governments.

The right to freedom of religion or belief, as defined by international standards and articulated in instruments such as the Covenant, is broad and covers a number of distinct but interrelated issues. The United Nations' Special Rapporteur on Freedom of Religion or Belief (“Special Rapporteur”) has produced a series of documents in an attempt to clarify the categories under which violations of the Covenant and other human rights instruments occur. Infractions of the Covenant fall primarily into the Special Rapporteur's first category: Freedom of Religion and Belief. This is the only category that will be explored in this Development. Within the Special Rapporteur's first category there are a number of subcategories, the most relevant of which are the Freedom to Adopt, Change, or Renounce a Religion or Belief; Freedom from...
Coercion; and The Right to Manifest One’s Religion or Belief. The application of each of these subcategories to examples of actual violations is explored below.

1. Freedom to Adopt, Change, or Renounce a Religion or Belief

The Covenant provides everyone “the right to freedom of thought, conscience and religion. This right . . . include[s] [the] freedom to have or to adopt a religion or belief of his choice.” In accordance with this clause, the Special Rapporteur has asserted that she monitors the compliance of States in such a way as

[t]o ensure that their constitutional and legislative systems provide adequate and effective guarantees of freedom of thought, conscience, religion and belief to all without distinction, inter alia by the provision of effective remedies in cases where the right to freedom of thought, conscience, religion or belief, the right to practise freely one’s religion, including the right to change one’s religion or belief, is violated.

Thus, subcategory one protects individuals from violations of their rights by the government and also requires a government to provide remedies when violations occur. For example, the government of Afghanistan violated clause 1 of the Covenant when it charged Abdul Rahman with the capital crime of conversion from Islam. Thus, because clause 1 of the Covenant ensures individuals the right to adopt a religion of their choice, a criminal penalty for the adoption of a religion or conversion from a religion constitutes an example of a breach of compliance.

2. Freedom from Coercion

Clause 2 of the Covenant proclaims that, “[n]o one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.” In accordance with this clause, the Special Rapporteur monitors the compliance of States

\[15\] Id at ¶ 35.
\[16\] Covenant at § 1 (cited in note 5).
\[17\] OHCHR, Individual Complaints and Model Questionnaire of the UN Special Rapporteur on Freedom of Religion or Belief, available online at <http://www2.ohchr.org/eng/ issues/religion/complaints.htm> (visited Apr 5, 2008) (“Individual Complaints and Model Questionnaire”).
\[18\] In this case, Rahman had converted to Christianity sixteen years before the charges were brought. Islamic views on conversion, otherwise known as apostasy, will be discussed in Section II. Human Rights Council, Implementation of General Assembly Resolution 60/251 of 15 March 2006 Entitled “Human Rights Council”, Report of the Special Rapporteur on Freedom of Religion or Belief, Asma Jahangir, Addendum, Summary of Cases Transmitted to Governments and Replies Received at 6, UN Doc A/HRC/4/21/Add.1 (2007) (“Summary of Cases”).
\[19\] Covenant at § 2 (cited in note 5).
to ensure that no one within their jurisdiction is deprived of the right to life, liberty, or security of person because of religion or belief and that no one is subjected to torture or arbitrary arrest or detention on that account, and to bring to justice all perpetrators of violations of these rights.\textsuperscript{20}

Thus, subcategory two does not allow the state to coerce individuals into a particular religion through the use of governmental instruments or deprivation of bodily security. For example, the Special Rapporteur found that the Somali government had violated the Covenant when it refused to respond to an incident where Somali militiamen shot and killed two people at a screening of a World Cup soccer broadcast.\textsuperscript{21} The militiamen purportedly instigated the attacks because the broadcast offended their interpretation of Islamic Law.\textsuperscript{22} Thus, even the mere failure of the government to intervene in situations where citizens’ rights to bodily security are infringed upon by others constitutes a violation of the Covenant.

3. The Right to Manifest One’s Religion or Belief

Clause 1 of the Covenant protects “the right to freedom of thought, conscience and religion. This right shall include 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.”\textsuperscript{23} Manifestation of religion also includes “the right of parents to ensure the religious and moral education of their children,” a right enumerated, specifically, in clause 4 of the Covenant.\textsuperscript{24} The Special Rapporteur monitors the compliance of states “to ensure . . . the right of all persons to worship or assemble in connection with a religion or belief.”\textsuperscript{25}

For example, the arrest and sentencing by Chinese officials of Ren Shujie for practicing Falun Gong constitutes a violation of clause 1 of the Covenant, under subsection three of Category 1 of the FRAMEWORK. Similarly, the failure of the government of Georgia to intercede where state school children were being baptized without parental permission is another a type of impermissible conduct.\textsuperscript{26} Subcategory three is potentially the broadest, including “all impediments, subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the

\textsuperscript{20} Individual Complaints and Model Questionnaire (cited in note 17).
\textsuperscript{21} Summary of Cases at 66 (cited in note 18).
\textsuperscript{22} Id.
\textsuperscript{23} Covenant at § 1 (cited in note 5).
\textsuperscript{24} FRAMEWORK (cited in note 13). See also Covenant at § 4 (cited in note 5).
\textsuperscript{25} Individual Complaints and Model Questionnaire (cited in note 17).
\textsuperscript{26} Summary of Cases at 23 (cited in note 18).
fundamental rights and freedoms of others." In summary, the UN’s interpretation of the right to freedom of religion and belief is comprehensive.

B. ALTERNATIVE VIEWS OF THE RELIGIOUS RIGHTS ARTICULATED IN THE COVENANT

Though the UN’s interpretation of the Covenant is binding, some of the signatories of the Covenant articulate significantly different views of religious freedom than those articulated in the Covenant itself. For example, Article 13 of the Universal Islamic Declaration of Human Rights defines the “Right to Freedom of Religion” differently in its original Arabic version than in its subsequent English translation.

The official English translation states that “[e]very person has the right to freedom of conscience and worship in accordance with his religious beliefs.” The differences between the right articulated in the English version of Article 13 and the right espoused by the Covenant are fairly subtle. This is not so with the Arabic version. The Arabic version states that everyone has freedom of conscience and worship according to the principle articulated in the Qur’anic sura, al kafirun 109:6, that states, “you have your religion, I have mine.” Though facially this may appear analogous to the Covenant, it is important to note that “al kafirun” can mean “unbelievers,” “infidels,” or “atheists,” and has a decidedly negative connotation.

Though the sura does lay the groundwork for coexistence between Muslims and nonbelievers, it does not provide the same level of protection for non-Muslims as one finds in the Covenant. For example, because the right to follow one’s own beliefs in a Shari’ah system does not extend to Muslims wishing to convert, such converts can be executed for apostasy. The Covenant would surely not allow such a consequence for conversion. Thus, at the outset, it is important to note that though the human rights declarations of Islamic scholars may appear facially similar to the UN’s interpretations of its human rights treaties, there may, in reality, be significant differences in the interpretations of such treaties by member states.

27 Covenant at § 3 (cited in note 5).
29 Id.
31 Id.
32 Qur’an 9.12.
This Section outlines the aspects of Iranian law that are relevant to a discussion of freedom of religion and belief in Iran. It is the combination of these aspects that makes violation of the Covenant virtually inevitable. First, this Section presents the pertinent clauses of the Iranian Constitution. Second, it examines alternative understandings of Shari‘ah law as the basis for Constitutional interpretation. Third, it illustrates that the structure of the Iranian government is significant because it ensures a stability of ideology and interpretation. Finally, it concludes that the Constitution is frequently interpreted in ways that appear to violate the explicit text.

A. THE CONSTITUTION OF THE ISLAMIC REPUBLIC OF IRAN

This Section describes the relevant portions of the Iranian Constitution and examines them in the context of domestic policies and actions. It also elucidates inconsistencies between the law as stated textually and the law as applied and executed.

1. Article 2 and Article 4: Rationale for Islamic Government

Together, Articles 2 and 4 of the Constitution create the link between the Iranian government and Islam. Article 2 of the Constitution sets out the

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The Islamic Republic is a system based on belief in:

(1) The One God (as stated in the phrase “There is no god except Allah”), His exclusive sovereignty and right to legislate, and the necessity of submission to His commands;
(2) Divine revelation and its fundamental role in setting forth the laws;
(3) The return to God in the Hereafter, and the constructive role of this belief in the course of man’s ascent towards God;
(4) The justice of God in creation and legislation;
(5) Continuous leadership (imamah) and perpetual guidance, and its fundamental role in ensuring the uninterrupted process of the revolution of Islam;
(6) The exalted dignity and value of man, and his freedom coupled with responsibility before God; in which equity, justice, political, economic, social, and cultural independence, and national solidarity are secured by recourse to:

(a) continuous ijtihad of the fuqaha’ possessing necessary qualifications, exercised on the basis of the Qur’an and the Sunnah of the Ma’sumun, upon all of whom be peace;
(b) sciences and arts and the most advanced results of human experience, together with the effort to advance them further;
(c) negation of all forms of oppression, both the infliction of and the submission to it, and of dominance, both its imposition and its acceptance.
rationale for the creation of a religious government, namely that God has “exclusive sovereignty and right to legislate,” that “divine revelation” has a “fundamental role in setting forth the laws,” and that “submission to [God’s] commands” is necessary. It emphasizes the importance of the Qur’an as the word of God in the creation of legislation and in its interpretation. As previously mentioned in Section I.A.3, the existence of a religious government does not automatically determine a country’s actions toward or view of rights of religious freedom. A religious government can, however, make a country susceptible to allegations of discrimination based on minority religious viewpoints.

Article 2 also delineates the justifications for the Qur’anic deference espoused by the Iranian government. Because God has exclusive sovereignty and the exclusive right to legislate, all human laws are subject to the regulations that God presented in the Qur’an. Thus, it is only logical that the most powerful and ultimately dominating branches of the Iranian government are those which utilize the Qur’an as their fundamental guide.

Article 2 ensures that the religious positions and Qur’anic interpretations of the prominent Iranian clerics remain the official legal positions of the Iranian government in all aspects of its rule, including its treatment of religious minorities. Because these clerics determine their own successors as well as those who are eligible to fill the elected seats of government, their interpretation of Shari’ah law will continue to be propagated and the governmental view is unlikely to evolve significantly. As will become evident through discussion in this Development, the prominent Iranian clerics hold a fundamentally conservative view of the Qur’an and its mandates.

Like Article 2, Article 4 solidifies the religious views of the prominent clerics into the ultimate religious and legal doctrine of the country, by requiring that “[a]ll civil, penal, financial, economic, administrative, cultural, military, political, and other laws and regulations must be based on Islamic criteria.”

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35 Id.
36 See Section I.A.3.
37 Iran Const, art 2.
38 Id.
39 "This principle applies absolutely and generally to all articles of the Constitution as well as to all other laws and regulations, and the fuqaha' of the Guardian Council are judges in this matter." Id, art 4.
40 Id.
Article 4 further subordinates the legislative powers of the elected branches to the power of the religiously oriented and appointed branches of the Iranian government, namely the Council of Guardians. Functionally, Article 4 is an extension and specification of the tenets presented in Article 2.

2. Article 12: Respect for Other Schools of Islamic Jurisprudence

Article 12 accords “full respect” to the different schools of Islamic jurisprudence and permits their followers “to act in accordance with their own jurisprudence in performing their religious rites.” In particular, Article 12 provides full legal respect to Sunni Muslims even though the official state religion is Shi’a Islam. In practice, however, Sunnis have not been afforded these rights. Clerics appear to interpret this provision inconsistently, thus allowing violations of both the Iranian Constitution and international law. This inconsistent interpretation is illustrated more fully in Section III.B. Though it is possible that these incidents simply reflect mistakes in the execution of constitutional law, it will become evident throughout the remainder of this Development that these “mistakes” are so prevalent and of such a nature that it would be more accurate to characterize them as governmental interpretation.

41 Id, art 12.

The official religion of Iran is Islam and the Twelver Ja’fari school [in usual al-Din and fiqh], and this principle will remain eternally immutable. Other Islamic schools, including the Hanafi, Shafi’i, Maliki, Hanbali, and Zaydi, are to be accorded full respect, and their followers are free to act in accordance with their own jurisprudence in performing their religious rites. These schools enjoy official status in matters pertaining to religious education, affairs of personal status (marriage, divorce, inheritance, and wills) and related litigation in courts of law. In regions of the country where Muslims following any one of these schools of fiqh constitute the majority, local regulations, within the bounds of the jurisdiction of local councils, are to be in accordance with the respective school of fiqh, without infringing upon the rights of the followers of other schools.

42 There are four major Sunni schools (madh’hab): the Hanafi School, the Malik School, the Shafi’i School, and the Hanbali School. Though the main Shi’a School is the Twelver Ja’fari School, other schools such as the Zaydi School also exist. These schools represent different interpretations of the Qur’an and the Sunnah. See Sayyid Moustafa Qazwini, Inquiries about Shi’a Islam, ch 3 (Islamic Education Center of Orange County), available online at <http://www.al-islam.org/shiism/3.htm> (visited Apr 5, 2008).

43 The Sunni/Shi’a split originally centered on the question of who was to become leader of the Islamic community after the death of Mohammed. Based on this initial division, the two schools have developed somewhat different views about spiritual life and the requisite rituals.
3. Article 13: Rights Afforded to Protected People

Article 13 recognizes Zoroastrians, Jews, and Christians as the only legally "recognized religious minorities" and the only religious minorities who "are free to perform their religious rites and ceremonies," "within the limits of the law." The text of Article 13 is significant for two reasons. First, it specifies that Zoroastrians, Jews, and Christians are the only protected people. Accordingly, people from other religions, for example, Hindus, Buddhists, and Baha'is, are not protected. They are not "free to perform their religious rites and ceremonies, and to act according to their own canon in matters of personal affairs and religious education." The Iranian government says as much with regard to the Baha'is in its 2006 response to a discrimination concern voiced by the Special Rapporteur, asserting that there are many "official religions" in Iran, but that Baha'ism is not one of them and is thus relegated to a lower governmental status.

Second, though Zoroastrians, Jews, and Christians are legally recognized, Article 13 only protects them "within the limits of the law," an articulation of the premise that freedom of religion for even the protected people can be restricted. Tellingly, despite these nominal constitutional protections for Jews, Christians, and Zoroastrians, these groups consistently endure violations of the rights they were promised. For example, in the early months after the 1979 Revolution, many Christian churches were closed, congregational lands were seized, and attacks were made against the clergy.

4. Article 14: Human Rights of Non-Muslims

Article 14 purportedly protects the human rights of non-Muslims who do not engage in "conspiracy or activity against Islam and the Islamic Republic of Iran Const, art 14. In accordance with the sacred verse; ("God does not forbid you to deal kindly and justly with those who have not fought against you because of your religion and who have not expelled you from your homes" [60:8]), the government of...
Iran. It says that non-Muslims are entitled to be treated in conformity with the principles of Islamic justice. As previously mentioned in Section I.B., human rights in the Qur'an are not necessarily synonymous with human rights as articulated by Western philosophers and ultimately international treaties. The range of rights recognized by the Qur'an is narrower than those typically espoused by international law. Thus the same concerns that were present with Article 13 are also present with Article 14. An Islamic society potentially supports the coexistence of Muslims and non-Muslims but does not purport to provide true equality of status rights to the two groups. 50

5. Article 23: Prohibition of Investigation of Beliefs and Harassment Based on Beliefs

Article 2331 professes to protect the rights to freedom of religion and belief by forbidding “the investigation of individuals’ beliefs” and by prohibiting molestation based on these beliefs. 52 Although Article 23 shares many similarities with other Articles, there are two additional issues at play here. First, only Muslims are permitted to run for President. 53 This seems counterintuitive given the text of Article 23, as it would seem to be impossible to know whether a candidate was Muslim without investigating his beliefs. Second, the fact that the Council of Guardians can disqualify candidates for office based on their beliefs also conflicts with Article 23. 54 Thus, the government is either ignoring the text of its Constitution, or, not interpreting Article 23 in a literal way.

If we assume that Article 23 is meaningful, it has still been violated by the Iranian government. For example, according to the Special Rapporteur’s Summary of Cases, “in September 2005, a religious jurist in Qom called for

the Islamic Republic of Iran and all Muslims are duty-bound to treat non-Muslims in conformity with ethical norms and the principles of Islamic justice and equity, and to respect their human rights. This principle applies to all who refrain from engaging in conspiracy or activity against Islam and the Islamic Republic of Iran.

50 See Qur’an 2.62. Compare id at 2.221 (explaining that marrying a believer from a lower social class is preferable to marrying an idolatress from the same social class).

51 “The investigation of individuals’ beliefs is forbidden, and no one may be molested or taken to task simply for holding a certain belief.” Iran Const, art 23.

52 Id.

53 See id, art 115. Though Article 115 does not explicitly mention the word Muslim, it does require “convinced belief in the fundamental principles of the Islamic Republic of Iran and the official religion of the country,” a requirement that is functionally the same.

crackdown on Sufi groups in Qom. Some people were reportedly required to sign documents renouncing Sufism. This is a violation of Article 23.

B. A BRIEF FRAMEWORK FOR THE INTERPRETATION OF THE IRANIAN CONSTITUTION: SHARI`AH

1. Shari`ah

Shari`ah law is the legal manifestation of Islam, as reported by the Qur’an and the Qur’anic interpretation present in the Hadith. Islam is unique in the fact that the religion itself sets out a legal system as opposed to just a religious system. Thus, discussion of Shari`ah law will be fundamentally religious in nature.

Qur’anic verse 2.256 states that, “[t]here is no compulsion in religion; truly the right way has become clearly distinct from error.” This being said, Shari`ah law, through its creation of a covenant with other people of the book, does promote a hierarchy within society that is based on religious belief. Muslims appear at the top and the nonbelievers at the bottom, as is evidenced by the common theme in both the Qur’an and the Hadith that striving against nonbelievers and defeating them is of utmost importance. Jews, Christians, and Zoroastrians (in Iran) fall between the believers and the nonbelievers, as they are “people of the book” or dhimmi and thus believe in the one true God. Though they call Allah by a different name, they, like Muslims, have been deemed worthy enough to receive revelation, and thus fall into a protected category within Shari`ah law. Within Muslim society, they are theoretically ensured certain rights including “security of person and property, freedom of worship, and a degree of communal autonomy.” Textually (and, for the most part, historically) nonbelievers have not been afforded these rights. Despite the fact that dhimmi are granted certain rights, their citizenship in Muslim society also has limitations. They are subject to a poll tax; they are not allowed to preach their religions

55 Summary of Cases at 46 (cited in note 16).
56 The Hadith are also considered religiously binding but are below the Qur’an in the religious hierarchy. Because the Hadith were not written by Mohammad himself, there is a significant body of historical Islamic jurisprudence determining which of the Hadith are reliable and thus should be followed.
58 See, for example, Qur’an 9.73, 9.123.
60 This tax is collected in place of the zakat, the Islamic tax used to support the poor.
openly; and they are forbidden from holding high political offices.\textsuperscript{61} Thus, though the dhimmi should enjoy religious tolerance, the Qur’an does not necessarily guarantee them equality or freedom of religion as described in the West.

It is also important to note that within Shari’ah law apostasy is considered a double crime, against both God and political authority, and punishment is the death penalty.\textsuperscript{62} Juristic interpretations of the requisite penalty for apostasy have varied throughout the course of history, though, with progressive Islamic scholars denying the necessity of a death sentence. Similarly, debates over the consistency between a death sentence for apostasy and the rule against compulsion in religion, with its multiple interpretations, are far from resolved.\textsuperscript{63} Thus, progressives continue to emphasize the penalty’s invalidity, while leaders and theorists associated with resurgences of textualism and conservatism elevate the penalty to a status like that of civil law.

Finally, jihad is an important part of the Qur’an and, thus, also a crucial part of Shari’ah law. Though only the final stage of a jihad is violent, its entire premise rests on the fact that Islam is the one true way.\textsuperscript{64} For example, the Qur’an states, “O Prophet! strive hard against the unbelievers and the hypocrites, and be hard against them; and their abode is hell; and evil is the resort.”\textsuperscript{65} The Qur’an also states,

\begin{quote}
O you who believe! do not take My enemy and your enemy for friends: would you offer them love while they deny what has come to you of the truth, driving out the Apostle and yourselves because you believe in Allah, your Lord? If you go forth struggling hard in My path and seeking My pleasure, would you manifest love to them? And I know what you conceal and what you manifest; and whoever of you does this, he indeed has gone astray from the straight path.\textsuperscript{66}
\end{quote}

These passages elucidate a potential difficulty faced by Islamic states in how to reconcile the promotion of the one true way with the protection of the rights of those who have chosen different religious paths. In practice, however, as evidenced by this Development, rights that contradict the Qur’an may simply be overlooked.

\textsuperscript{61} Dalacoura, Islam, Liberalism and Human Rights at 46 (cited in note 59).
\textsuperscript{62} Id at 47.
\textsuperscript{63} For a discussion of the different viewpoints see Mayer, Islam and Human Rights at 167–68 (cited in note 30).
\textsuperscript{64} For more information on Shari’ah law, see generally Hunt Janin and André Kahlmeyer, Islamic Law: The Sharia from Muhammad’s Time to the Present (McFarland 2007).
\textsuperscript{65} Qur’an 66.9.
\textsuperscript{66} Id at 60.1.
2. Qur’anic Interpretation: The Many Faces of Shari’ah

There are two general Muslim perspectives regarding Islam, and the Qur’an in particular. The first, as explained by Katerina Dalacoura, views Islam as a sacred, unchanging, predominantly literal, “eternally determined body of rules.” It is exceedingly difficult, if not impossible, to reconcile this perspective with modern international human rights. Iranian clerics have adopted this conservative view of Islam. The second perspective, one that can be compatible with modern international human rights, views Islam as capable of change, development, and transformation over time, as long as the underlying spirit of the religion is maintained. Dalacoura, in *Islam, Liberalism and Human Rights*, writes,

> If the literal word of the Koran and the traditional sharia are accepted as prescriptive, there is no room for conciliation. Similarly, if society at the time of the Prophet is posited as the ideal, the outcome is sterility in liberal thought, even if that ideal is described as democratic.

This difference in Qur’anic interpretation turns partially on whether the gates of *itjihad*, the process of applying reason when interpreting the Qur’an, have been closed, meaning that there is no further room to interpret the Qur’an and the *Hadith*. An open gate of *itjihad*, which allows current Islamic scholars to provide new Qur’anic interpretation, is necessary but not sufficient for a reading of Islam that is compatible with international notions of human rights.

Dalacoura also writes that for an Islamic worldview to be compatible with international human rights, it must view the law, even Shari’ah law, as having the purpose of serving humankind, thus maintaining a level of flexibility to adapt to changing circumstances. This is distinct from the conservative view that the purpose of law is solely to “serve God.” Again, however, an emphasis on serving the public is necessary but not sufficient for the requisite compatibility to occur. Dalacoura summarizes her systemic analysis: “If the law is seen as an immutable divine imperative—serving God, not man, and coming from God directly, without human intervention—the law becomes intolerant, whatever its particular rules, partly because those who execute the law cannot be held

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68 Id.
71 Id.
72 Id at 64.
73 Id.
74 Id.
75 Id.
accountable.” She concludes that this is what happened in Iran after 1979, the
tear of Iran’s Islamic Revolution when the secular government of the Shah
was overthrown in favor of an Islamic Republic.

The Iranian clerics in power in the Islamic Republic of Iran believe that
Law is an “immutable divine imperative” and though it serves man, its primary
purpose is to serve God. This is not so with all Islamic thinkers. The Sudanese
Ustaz, Mahmud Muhammad Taha, for example, suggested that “the Koran was
revealed in two stages, the first, in Mecca, dealing with general moral and
religious principles and the second, in Medina, being more specific and legalistic
because it was responding to a concrete situation.”77 Taha and his followers
believed that only the revelation of general moral and religious principles is
eternally authoritative, whereas the specific legalistic tenets of the Medina
revelation are limited to that time period alone.78 Under such a view, the specific
legal tenets could be reformed as the particular needs of society change.79

C. INTERPRETERS OF THE IRANIAN CONSTITUTION:
DEMOCRATS OR PHILOSOPHER-KINGS?

The Constitution of the Islamic Republic of Iran sets out the governmental
structure through which power flows. The structure of the government is
significant because power is concentrated in the Supreme Leader and the
Council of Guardians (“Council”), positions that are unelected and, perhaps
more importantly, religiously oriented. The Supreme Leader chooses the voting
members of the Council. The Council then determines who can run for the
other political offices and whether laws passed by these elected political officials
violate the Constitution and ultimately the Qur’an.80 Even if popular Iranian
opinion regarding the role of religion in daily life were to change, a subsequent

76 Id.
77 Id at 61.
78 See Mahmoud Mohamed Taha, The Second Message of Islam 124–64 (Syracuse 1987) (Abdullahi
Ahmed An-Na’im, trans).
79 See id at 130. For example, Taha, using this methodology, stated that polygamy is no longer
acceptable. The general moral principle revealed in the first stage was that “marriage is between
one man and one woman.” Before the revelation of the Qur’an a man could take as many wives
as he wanted, and historically, in times of scarcity, these wives would suffer and, in many cases
die. Thus the Qur’anic limitation of four wives was actually a step forward for women, moving
them toward the ultimate goal of better treatment in marriage. This example is significant because
it illustrates how an adherence to the Qur’an does not have to prohibit the development of a
modern legal system compatible with international legal norms. Other reformers have taken
slightly different approaches, but the consequences have been the same: a flexible view of the
Qur’an and ultimately the role and prescriptions of Shari‘ah law allow modern Islamic law to be
compatible with international human rights treaties. See id at 140–41.
80 For more detail about the structure of the Iranian government, see note 81.
modification in the Iranian jurisprudence and lawmaking would not necessarily follow, and at the very least, could be significantly delayed. This is true because the Supreme Leader has the power to create and to control the Council, and the Council has a dominant relationship with the other branches of the government, thus ensuring a continuity of ideas, regardless of public opinion. Thus, the interpretations of Shari'ah law, the Iranian Constitution, and the relationship between them are fairly immutable and will be treated as such throughout the remainder of this Development. The Supreme Leader’s understanding of the Constitution and the Qur’an and the relationship between them thus constitute what amounts, in all practicality, to binding Constitutional interpretation.

The original Supreme Leader was Ayatollah Khomeini, leader of the Iranian Revolution. The current and only other Supreme Leader is Ayatollah Khamenei, who was personally chosen by, and succeeded Ayatollah Khomeini after his death. Khomeini espoused a traditionalist, literalist view of Islam in his writings and speeches based on the Qur’an. This Qur’anic view, in turn, is the basis of the “legitimate” interpretation of the Constitution of the Islamic Republic of Iran. Article 4 of the Constitution asserts that “all articles of the Constitution, as well as . . . all other laws” must be based upon Islamic criteria. Because the official government stance regarding Qur’anic interpretation is conservative and textualist, all modern rights are subject to the actual textual limitations and specifications within the Qur’an and the historical interpretations

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81 At the top of Iran’s power structure is the Supreme Leader, who sets the tone and direction of Iran’s domestic and foreign policy. He has the power to appoint and to dismiss, among others, the leaders of the judiciary, and six of the twelve members of the Council of Guardians. The Council of Guardians interprets the Constitution and determines whether the laws passed by parliament are in line with Shari’ah. It has veto power over Parliament, and at times has vetoed up to 40 percent of the laws passed by Parliament. The Council also has the power to determine the fitness of candidates for the popularly elected positions. The remaining six jurists on the Council of Guardians are recommended by the Judiciary and appointed by Parliament. In the 2001 Presidential election, only 10 out of 270 candidates were approved by the Council and made the ballot. Thus, in conjunction with the Supreme Leader, the Council holds a significant amount of power.

The President, elected by popular vote, is technically the second highest ranking officer of the Iranian government, but shares his control of many government agencies with the Supreme Leader. The parliament, also popularly elected, drafts legislation, ratifies treaties, and approves the budget, subject to the approval of the Council of Guardians.

The Assembly of Experts is a group of eighty-six “virtuous and learned” clerics popularly elected for eight-year terms. They meet once a year and elect the Supreme Leader from within their ranks. They also periodically reconfirm him. Historically, the Assembly has never challenged a Supreme Leader’s decision. See Iran Chamber Society, The Structure of Power in Iran, available online at <http://www.iranchamber.com/government/articles/structure_of_power.php> (visited Apr 5, 2008).

82 See id.

83 Iran Const, art 4.
of Qur’anic statements found in the Hadith. As was previously mentioned, a literal interpretation of the Qur’an puts it at odds with “Western” views on freedom of religion and belief.

Ayatollah Khomeini, leader of the Islamic Revolution and first Supreme Leader, asserted that “[w]hat they call human rights is nothing but a collection of corrupt rules worked out by Zionists to destroy all true religions.”84 Similarly, Ali Khamenei, then president of Iran and successor-in-waiting to Khomeini as Supreme Leader, stated, “[w]hen we want to find out what is right and what is wrong, we do not go to the United Nations; we go to the Holy Koran. . . . For us the Universal Declaration of Human Rights is nothing but a collection of mumbo-jumbo by disciples of Satan.”85

Ayatollah Khomeini’s statement in the previous paragraph is particularly illuminating because of its focus on human rights as the attempted destruction of all true religions, namely Islam. As illustrated by his commitment to a religious conservative ideology, one can surmise that a liberalization of the views on freedom of religion, belief, and expression, and a lifting of the ban on apostasy, would fall into the category of attempted destruction of Islam. In some of his political speeches, Khomeini did praise a concept of society where there will be no difference between religious minorities and Muslims in the implementation of justice.86 In the vast majority of his writings and speeches, however, Khomeini did not refer to these religious minorities in a complimentary way. For example, in his Program for the Establishment of an Islamic Government, Khomeini wrote,

In our own city of Tehran now there are centers of evil propaganda run by the churches, the Zionists, and the Baha’is in order to lead our people astray and make them abandon the ordinances and teachings of Islam. Do we not have a duty to destroy these centers that are damaging to Islam?87

In his Message to the People of Azerbaycan he declared, “The religious leaders will hoist the banner of Islam to exact vengeance on this Zuhhak88 of the age, and the nation of Islam, with their hearts in unison and obeying the life-giving teachings of the Qur’an will expunge every trace of this anti-Islamic regime that wishes to revive Zoroastrianism.”89 Khomeini’s views toward people of other

85 Id.
86 See, for example, Khomeini, Islam and Revolution at 266 (cited in note 69).
87 Id at 128.
88 This is a comparison to a villainous king in pre-Islamic Iran who was defeated by the Muslims, in the same way that Khomeini is planning to defeat the villainous in modern times.
89 Khomeini, Islam and Revolution at 230 (cited in note 69). The conciliatory nature of this speech is most likely due to the fact that it was made before the revolution, and Khomeini was in the process of gaining power.
religions and their role in society were further elucidated in his pre-revolution declaration, *In Commemoration of the Martyrs at Qum*. In this speech, Khomeini clearly abhorred the fact that Jews and Christians were allowed to be judges and “to decide on affairs concerning the honor and person of the Muslims.” These statements exemplify Khomeini’s views toward religious minorities and their proper role in an Islamic society: they are not equal and they should not receive equal opportunities.

Khomeini’s actions as Supreme Leader of Iran support this view. For example, on February 14, 1989, Khomeini issued a death edict for blasphemy for Indian-born, British-citizen, Sunni-Muslim Salman Rushdie, claiming that his novel, *The Satanic Verses*, was an attack on “Islam, the Qu’ran, and the Prophet.” Though the Iranian clerics had not even read the book, which was published in English, Khomeini added to the death sentence that Rushdie must be executed even if he repented. On June 3, 1989, Khomeini died, making the *fatwa* (in this case a death sentence) permanent. The post-Khomeini government maintained that the *fatwa* cannot be reversed and only in 1998 did it promise to dissociate itself from it.

Despite the fact that the government dissociated itself from the death sentence, a move that appeared to signify an evolution in the governmental views surrounding blasphemy, it continued to act in conformity with its pre-dissociation views. Hashem Aghajari, an Iranian academic, was sentenced to death in 2002 for blasphemy after he gave a speech that questioned the power of the clerics and mainstream emulation of their behavior. Though the Iranian Supreme Court quashed the death sentence in 2003 for procedural failings, the case was sent back to the very same court that had issued it. Thus, it is apparent that the government’s position regarding public speech antithetical to its Qur’anic beliefs has not significantly changed between 1989 and 2002. This is not unexpected. As described above, the structure of the government ensures that people with the same viewpoints will remain in power.

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90 Id at 175.
92 For more information on *fatwas*, see Muhammad Khalid Masud, Brinkley Messick, and David S. Powers, eds, *Islamic Legal Interpretation, Muftis and their Fatwas* (Oxford 2005).
95 Id.
III. THE SHATTERED MIRAGE: INHERENT CONFLICT BETWEEN THE CONSTITUTION AND THE COVENANT

The situation in Iran is one in which the actions of the government illustrate the interpreted meanings of the Constitution and the government’s commitment to the premises therein. At first glance, it appears that it would be possible for the international community to command Iran to conform its behavior to international law. This is not possible, however, without a complete overhaul of the Iranian government because of Iran’s understanding of the Qur’an and its role in the Iranian Constitution.

As long as the human rights articulated in the Iranian Constitution are subject to literal and historically based analyses of the Qur’an, the Iranian government will be unable to comply with the Covenant. The structure of the Iranian government ensures that its traditionalist view of the Qur’an, espoused by Ayatollah Khomeini and his followers at the time of the Revolution, will continue to be the dominant religious view among the people in power. Thus, as long as the Iranian government remains structured in this way, allowing little flow of progressive theological ideas, its interpretation of the very Constitution which defines its power will violate the Covenant. In some cases, the actions of the government seem to even violate the majoritarian Qur’anic view which has, at least, nominal human rights protections. In other places, the traditional Qur’anic view itself is at odds with human rights. Section III.A explores textual violations and Section III.B examines interpretive violations of the Covenant.

A. DIRECT TEXTUAL VIOLATIONS OF THE COVENANT

1. Freedom to Adopt, Change, or Renounce a Religion

Under the Covenant, the freedom to adopt, to change, or to renounce a religion is absolute. Article 13 of the Iranian Constitution’s limitation on protected religions explicitly violates the Covenant’s absolute protection of this freedom. It may appear that such a violation of the Covenant could be remedied by removal of the word “only” from Article 13 of the Constitution. This Development illustrates that an examination of the relationship between the Qur’an and the Constitution reveals that such a simple solution is not possible. The belief in only a small, limited group of protected non-Muslims is religiously significant, and thus a fundamental part of the Iranian system.

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96 Human Rights Committee, General Comment No. 22 at ¶ 3 (cited in note 11).
97 See Covenant (cited in note 5).
2. Limitations on Freedom of Belief versus Limitations on Manifestations of Belief

The Covenant protects freedom of belief absolutely, meaning that there is no acceptable governmental rationale for restricting it. The right to manifest one’s religion or belief is 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.”

Putting aside the aforementioned violation inherent in the constitutional restriction of freedom of worship to dhimmi, it is likely that the even the freedoms afforded to these “protected peoples” would not be sufficient to allow conformity with the Covenant. Article 13 of the Iranian Constitution states that dhimmi are allowed “within the limits of the law” to manifest their beliefs in the form of worship and education that they prefer. Though Article 13 does have one of the prongs of the Covenant’s permitted limitation on the right to manifestation of religion, the requirement that the limitation be codified in law, it does not have the second, the requirement that the limitation be “necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.”

Thus, it seems that the Iranian government could pass a law limiting, for example, Jewish schools. Such a law would pass constitutional muster, but would ultimately violate the Covenant. It could be argued that such a law might fall under the protection of morality, an area protected by the Covenant, if morality in Iran is religiously defined. Such an interpretation of the Covenant, however, seems problematic. If read in this way, the Article would essentially ensure an individual’s right to freedom of belief and the manifestations of that belief unless his government, a theocratic government promoting a different religion, passed a law that prohibited the practice of the individual’s religion because it was contrary to and thus immoral according to the religion promoted by the government. The government in such a situation could simply argue that any religion that is different from the state religion is immoral. Thus, under such a reading, the Covenant provides virtually no protection at all for freedom of religion. The Human Rights Committee has ruled that the use of the morality exception for discriminatory purposes against a particular religion is invalid under the Covenant. Therefore, an appeal to the morality clause in this case would not be justifiable.

98 Id at § 3.
99 Iran Const, art 13.
100 Covenant at § 3 (cited in note 5).
101 Human Rights Committee, General Comment No. 22 at ¶ 8 (cited in note 11).
Accordingly, the text of Article 13 of the Iranian Constitution appears to violate the Covenant in a number of ways. First, it only extends purported religious freedom to Jews, Christians, and Zoroastrians, thus implicitly denying this freedom to people of other religions and beliefs. Second, it provides these protected people the freedom to manifest their religion subject to the limits propounded by law. As Iranian law is significantly intertwined with its interpretation of the Qur'an, “the law” could refer to either secular peacekeeping regulations or religious moral mandates. Similarly, the fact that Article 13 of the Iranian Constitution only includes one part of the Covenant’s two-part limitation does not, absent evidence that the Iranian government is using this limitation for purposes deemed illegitimate by the Covenant, require that the Article is inconsistent with the Covenant. In both scenarios, a thorough analysis of the interpretation and application of the second portion of Article 13 is required to determine its actual compatibility with the Covenant.

B. Violations in Interpretation and Application

No government perfectly executes its law. There are mistakes made by individuals and bureaucracies that sometimes tend to undermine the very purposes of the constitutional provisions or legislation which they are bound to protect. That being said, sometimes actions that appear to be facially inconsistent with legislative and constitutional texts, in fact, elucidate the true meaning of the texts to both those who created them and those who execute them.

The Iranian government’s constitutional interpretation remains fairly stable as a result of the structure of the Iranian government and the distribution of power. Thus, discerning the government’s interpretation of its own Constitution allows researchers to determine with reasonable accuracy the fundamental Iranian legal understanding of and commitment to the rights enumerated in the Covenant. Though an adherence to Qur’anic law over international law does not necessarily mean that Iran could not comply with international law, it calls into question the view that the Iranian Constitution puts forth the same rights as those outlined in the Covenant. It is unlikely that a government that believes that the rights articulated in International Treaties is the “mumbo-jumbo” of “the disciples of Satan” has created a domestic constitution promoting that “mumbo-jumbo” as the law of the land. The Iranian government is not, however, ill-versed in foreign affairs and assuredly understands that to be an accepted political and economic member of the

102 See Section II.C.
103 See id.
international community it must be a member of the UN and that to gain international approval it must maintain its ratification of the Covenant. In all practicality, however, this does not mean that the Iranian government supports these ideals or ultimately intends to comply with them.

The Iranian government's lack of support for the rights articulated in the Covenant is evident from its inconsistent application of the clauses in the Iranian Constitution. As was illustrated in Section II.A, the Iranian government has blatantly and consistently violated Articles 12, 13, 14, and 23 of its Constitution. Such a massive scale of transgression is unlikely to result from mere misfeasance on the part of individual government agents. It is significantly more likely to result from an underlying government strategy. In this case, the government strategy regards both the necessity of membership in the international legal community and includes inherent animosity toward the "Western" version of freedom of religion. Thus, the number and scope of these violations represents an inherent interpretive incompatibility between the Constitution and the Covenant. In short, the Iranian implementation of Iranian law through its Constitution and its power structure cannot protect the international legal rights of freedom of religion and belief as articulated by the Covenant.

1. Freedom to Adopt, Change, or Renounce a Religion or Belief

Clause 1 of the Covenant asserts the freedom to adopt, change or renounce a religion or belief. Section II.A.3 illustrated that the Iranian Constitution's limitation of religious freedom to only Jews, Christians, and Zoroastrians automatically violates the Covenant because it does not provide freedom of religion to all religious groups. Its application to these groups also violates the Covenant because it restricts the rights of individuals to convert from Islam to other religions, including the protected ones. For example, the criminal punishment for apostasy, and its subsequent limitation on belief is an element of the Shari'ah law adopted by Iran. For example, in December 1993, Reverend Mehdi Dibaj was sentenced to death by a Revolutionary Court for apostasy and insulting Islam. He had converted from Islam to Christianity forty-five years earlier. The criminalization of renouncing a religion, even if based in religious exegesis as opposed to codified law, blatantly violates clause 1 of the Covenant. It is, however, an important aspect of conservative Islam. Thus, it is apparent that freedom of belief is subject to Qur'anic limitations,
limitations that, when read literally, conflict in a number of areas with the Covenant.

2. Freedom from Coercion

Clause 2 of the Covenant states, “[n]o one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.” The Human Rights Committee of the United Nations has asserted that coercion includes “the use of threat of physical force or penal sanctions to compel believers or non-believers to adhere to their religious beliefs and congregations, to recant their religion or belief or to convert.” Similarly, the Committee has stated that “policies or practices having the same intention or effect” constitute coercion. Examples include the restriction of access to education, medical care, or employment because of religious beliefs.

The Iranian government regularly engages in coercive behavior in spite of its Constitution because it systematically violates Article 23, which forbids the investigation of individuals’ beliefs. As discussed in Section II.C, it investigates the religious beliefs of both people hoping to become members of the government and requiring ordinary citizens to sign documents stating and renouncing their religion.

Finally, the Iranian government provides a number of privileges to Shi’a Muslims that it does not provide to other groups. For example, Shi’a seminary students are exempt from military service whereas Sunni seminary students are not. This discriminatory granting of privileges is coercive by nature. Thus, the Iranian government is willing to manipulate the meaning of the Constitution and its purported prohibitions to achieve its religious goals, regardless of the coerciveness of the techniques utilized.

3. The Right to Manifest One’s Religion or Belief

Clause 1 of the Covenant includes the freedom to manifest one’s religion or belief “in worship, observance, practice and teaching.” This is limited only by “limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of

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108 Covenant (cited in note 5).
109 Human Rights Committee, General Comment No. 22 at ¶ 5 (cited in note 11).
110 Id.
111 Id.
112 See Iran Const, art 23.
113 Human Rights Watch, Iran: Religious and Ethnic Minorities (cited in note 45).
114 Covenant (cited in note 5).
The Iranian government views this limitation on the freedom to manifest one’s religion very broadly, thereby putting the Constitution and its application in conflict with the Covenant.

For example, though Article 13 of the Constitution maintains that protected peoples have the freedom to manifest their religious beliefs subject only to limitations of law, the limitation frequently engulfs the freedom. Despite supposed freedom of worship, in the early months after the Revolution, many Christian churches were closed, congregational lands were seized, and attacks were made against the clergy. The Covenant protects the right to manifest one’s religion “individually or in community with others and in public or private.” The removal of such structural mechanisms for “worship, observance, practice and teaching” constitutes an undue restriction on the ability of minority religious groups to manifest their religion as they see fit.

Similarly, though Article 12 of the Constitution purportedly provides, without exception, equal rights of religious practice to members of minority schools of Islamic jurisprudence, these rights are not infrequently violated in practice. For example, Shi’a prayer leaders are carrying out religious rites in accordance with Shi’a traditions despite the fact that they are serving Sunni congregations. Likewise, when a Sunni mosque was destroyed by Shi’a radicals, authorities took no action to restrain or punish the perpetrators. In 1994 when the Sunni community of Sanandaj raised sufficient funds and obtained all the necessary building permits from local officials to enlarge their mosque, the Ministry of Islamic Guidance blocked the enlargement and confiscated the funds.

Thus, the Iranian government unduly burdens the freedom of individuals to manifest their religion. Though exceptions may exist in individual situations to protect the religious rights of others or to maintain public safety, the overwhelming majority of violations of the Covenant cannot be justified on such grounds. Therefore, the limitation presented in the Iranian Constitution on the right to manifest one’s religion is significantly broader and thus inherently incompatible with the limitation espoused by the Covenant.

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115 Id.
117 Covenant (cited in note 5).
118 Human Rights Watch, Iran: Religious and Ethnic Minorities (cited in note 45).
119 Id.
120 Human Rights Watch, Iran: Religious and Ethnic Minorities (cited in note 45).
4. The Cross-Categorical Issues Concerning Article 14 of the Iranian Constitution

Article 14 purportedly protects the human rights of non-Muslims who do not engage in conspiracy or activity against Islam and the Islamic Republic of Iran. It says that non-Muslims are entitled to be treated in conformity with the principles of Islamic justice. As mentioned in Section II of this Development, human rights in the Qur'an are not necessarily synonymous with human rights as articulated by Western philosophers and ultimately international treaties. An Islamic society potentially supports the coexistence of Muslims and non-Muslims but does not purport to provide true equality of status rights to the two groups.\(^{121}\)

Another issue with Article 14 is its susceptibility to being utilized in such a way as to undermine the exact rights which it is supposed to protect. When “insulting Islam” is a crime, it is fairly easy to target entire religious groups for their beliefs or practices and accuse them of conspiring against Islam. This is best demonstrated by examining a concrete example. On January 15, 2006, three members of the Baha’i community were arrested and one of them was told that he attracted “non-Baha’i to the Baha’i faith.” His crime was reduced from apostasy, a crime punishable by death, to involvement in Baha’i activities and insulting Islam. Another detainee was told that she was charged with “teaching the Baha’ism sect and acting in an insulting manner towards all that is holy in Islam.”\(^{122}\)

In addition, on May 19, 2006, fifty-four Baha’is were arrested in Shiraz while involved in local community work with a local nongovernmental organization.\(^{123}\) Many were released after their homes and belongings had been searched and after they agreed to appear in court if summoned.\(^{124}\)

Another issue involves the potential monitoring of Baha’i communities. The Special Rapporteur was concerned by this program as put in place by the Iranian government.\(^{125}\) As of March 8, 2007, the Iranian government had not responded to the Special Rapporteur’s questions regarding the second issue and had responded that the first set of incidents was necessary because of an alleged conspiracy by the individuals charged against the Islamic Republic of Iran. Though the Iranian government denies that the arrests were made on the basis of religion, and, in fact claims that the majority of the sixty-one people arrested

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\(^{122}\) Id.

\(^{123}\) *Summary of Cases* at 48 (cited in note 18).

\(^{124}\) Id.

\(^{125}\) Id at 44.
were not Baha’i, the numbers of the Special Rapporteur seem to speak differently.\textsuperscript{126} Thus, Article 14 may not provide much real protection for unprotected religious minorities at all.

\textbf{IV. AN UNSETTLING CONCLUSION: WHERE DO WE GO FROM HERE?}

This Development concludes that unless the Islamic Republic of Iran undergoes a regime change or a significant evolution of either theological or political belief, it will be unable to comply with the Covenant and the subsequent UN mandates requiring the modification of national policies. This should be disturbing for the international community as a whole. What is the United Nations to do when, because of systemic and ideological inherencies, a country cannot be brought into compliance with the Covenant save an overthrow of its government or a revolution in its “religio-moral” consciousness? Traditional UN sanctions are unlikely to be effective because the penalties will purport to punish specific incidents, incidents that in the case of Iran are symptomatic of its general administrative policy as opposed to freestanding events. Also, those in power are not likely to choose to facilitate the ultimate demise of their authority by admitting systemic flaws for the sole purpose of avoiding punitive measures on individual governmental actions. Thus, the current sanctioning system is unlikely to be effective.

Similarly, the levels of international outrage and publicity are likely to be less than those surrounding violations of other human rights. This may be due to the susceptibility of certain violations, such as torture, to media sensationalism, or it may be that because significant portions of the world have strong religious convictions, the actions of government in the name of religion seem less abhorrent than other motivations. Regardless, Iran’s unwillingness, and ultimately, inability to comply with the Covenant is unlikely to be able to compete with stories about nuclear warheads and mass suicide bombings for a place on the front page.

Is the United Nations, then, to give up? Is it to accept that a signatory of one of its most important human rights treaties is to be eternally in violation of it? Or is it simply to expel Iran from the treaty, doubtlessly causing an international rift while at the same time ensuring that change does not occur? Some might argue that UN forces should be deployed, but what country does not have violations of the Covenant?\textsuperscript{127} Which politician or world leader feels

\textsuperscript{126} Id at 47–49.

\textsuperscript{127} For example, in 2005, the Special Rapporteur reported violations by forty-two countries, including world powers China, France, India, Pakistan, the Russian Federation, the United Kingdom, and
confident enough in the strength of his glass house to throw the first stone? The international community may be at an impasse. This author, however, believes that there must be a solution and calls on the international legal community to find it, for as the Qur'an clearly states, "there is no compulsion in religion."\textsuperscript{128}