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Mexico and the 1981 United Nations Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief

*Jose Luis Soberanes Fernandez**

I. INTRODUCTION

Within the realm of human rights, it is extremely difficult to determine the proper scope of the freedoms of conscience, of belief, and of religion and to identify those freedoms' progress and achievements in a general and versatile manner for all nations. The name of this freedom cannot easily be reduced to a single word—for that reason, international textbooks resort to the expression “freedom of conscience, of convictions, and of religion.” However, for purposes of brevity we speak simply of “religious freedom,” called “freedom of worship” or “freedom of conscience” in days past. Criticisms pointing out the deficiencies of all these terms are pointless. Therefore, we should stop pointing out this enormous difficulty and try to agree on a simple and understandable expression for all.

To this end, in 1981, the United Nations (“U.N.”) adopted the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (“1981 Declaration” or “Declaration”).¹ The U.N.’s effort, which had the purpose of establishing a minimum consensus regarding religious freedom that everyone could understand, is very commendable. This effort, incidentally, was the result of more than two decades of important work,² which I will not describe here because it is beyond the scope of this article.

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1. G.A. Res. 55, U.N. GAOR, 36th Sess., Supp. No. 51, at 171, U.N. Doc. A/36/684 (1981), *available at* <http://www.un.org/documents/ga/res/36/a36r055.htm> (last visited Mar. 8, 2002) [hereinafter *1981 Declaration*].

2. *See* ELIZABETH ODIO BENITO, CTR. FOR HUMAN RIGHTS, ELIMINATION OF ALL FORMS OF INTOLERANCE AND DISCRIMINATION BASED ON RELIGION OR BELIEF ¶ 188, U.N. Sales No. E.89.XIV.3 (1989).

However, the U.N. fell short of realizing its purpose by failing to formulate a convention that would put into practice the principles of the Declaration. The Declaration does not impose an international legal obligation on the signatory nations. Had the U.N. formulated a corresponding convention, the member states could have bound themselves legally to adequately respect religious freedom under the precise terms of the Declaration. However, the U.N. has not yet fulfilled this task, despite the passage of twenty years since the Declaration was issued.

The purpose of this article is to describe the beginnings, progress, and current state of religious freedom in Mexico. Part II describes the attitudes of the Mexican government toward religion during the past century. Part III describes Mexico's attitude and behavior regarding the Declaration, pointing out that Mexico purported, in the international arena, to be much more in favor of religious freedom than it really was (in the domestic arena). Parts IV and V point out that despite several pro-religion reforms that were made to Mexico's Constitution in 1992, much necessary progress remains.

II. HISTORY OF RELIGIOUS FREEDOM IN MEXICO

Mexico, a country that has for decades proclaimed itself a liberal and democratic state, possesses a very lamentable characteristic: the restriction of religious freedom. This restriction produced a precarious situation in the country between 1917 and 1992. The constitution that was in effect at that time included several provisions that repressed religious freedom. Even so, it would not have been inconsistent for Mexican authorities to approve the Declaration—even though the Declaration contradicted (and to a certain extent continues to contradict) the express text of the federal constitution of Mexico. Mexican authorities often deviated from the repressive mandates of the constitutional text.

A. *An Overview*

For many historical, political, and social reasons, the original text of the 1917 Mexican Constitution contained a series of principles that, *de jure*, came to limit religious freedom enormously.³

3. See *infra* Part II.B. Following are the principal written works on this topic: JORGE

Nevertheless, during the seventy-five years that such principles were in effect (they were radically reformed in 1992), they were rarely enforced, and an attempt to put them into practice caused a civil war from 1926 to 1929.⁴

I will review some, but not all, of the difficulties Mexico suffered during those seventy-five years due to its enforcement or non-enforcement of constitutional Articles 3, 5, 24, 27, and 130 (the articles that restricted religious freedoms).⁵

Between February 5, 1917 (when the Constitution was enacted)⁶

ADAME, LA LIBERTAD RELIGIOSA EN MÉXICO (1990); IMDOSOC, LAS REFORMAS CONSTITUCIONALES EN MATERIA DE LIBERTAD RELIGIOSA (1992); JOAN CAPSETA CASTAÑEDA, PERSONALIDAD JURÍDICA Y RÉGIMEN PATRIMONIAL DE LAS ASOCIACIONES RELIGIOSAS EN MÉXICO (1997); ALEJANDRO DELGADO ARROYO, HACIA LA MODERNIZACIÓN DE LAS RELACIONES IGLESIA-ESTADO (1997); MANUEL GONZÁLEZ CALZADA, LOS DEBATES SOBRE LA LIBERTAD DE CREENCIAS (1994); JOSÉ ANTONIO GONZÁLEZ FERNÁNDEZ ET AL., DERECHO ECLESIASTICO MEXICANO (1993); RAÚL GONZÁLEZ SCHMAL, DERECHO ECLESIASTICO MEXICANO, UN MARCO PARA LA LIBERTAD RELIGIOSA (1997); INSTITUTO DE INVESTIGACIONES JURÍDICAS DE LA UNAM & UNIVERSIDAD AMERICANA DE ACAPULCO, RELACIONES DEL ESTADO CON LAS IGLESIAS (1992); TEODORO IGNACIO JIMÉNEZ ORESTU, RELACIONES REESTRENADAS ENTRE EL ESTADO MEXICANO Y LA IGLESIA (1994); JOSÉ LUIS LAMADRID SAUZA, LA LARGA MARCHA A LA MODERNIDAD EN MATERIA RELIGIOSA (1994); Soledad Loaeza Tovar, *El Fin de la Ambigüedad, Las Relaciones Entre la Iglesia y el Estado en México, 1982-1989*, in 14 DIÁLOGO Y AUTOCRÍTICA (1990); ARMANDO MÉNDEZ GUTIÉRREZ, UNA LEY PARA LA LIBERTAD RELIGIOSA (1992); ANTONIO MOLINA MELIÁ, LAS LIBERTADES RELIGIOSAS, DERECHO ECLESIASTICO MEXICANO (1997); Manuel Olimón Nolasco, *Iglesia, Política en el México Actual, Presencias e Interpretaciones*, in 7 DOCTRINA SOCIAL CRISTIANA (1989); *Nuestro Destino Nacional: De la Ambigüedad a la Definición*, in 16 DIÁLOGO Y AUTOCRÍTICA (1990); ALBERTO PACHECO E., DERECHO ECLESIASTICO MEXICANO (1993); TEMAS DE DERECHO ECLESIASTICO MEXICANO (1993); ANTONIO JOACHIN DE PÉREZNIETO Y BARRIENTOS, MANUAL COMPENDIO DEL REGIO PATRONATO INDIANO (1993); JOSÉ FRANCISCO RUIZ MASSIEU ET AL., RELACIONES DEL ESTADO CON LAS IGLESIAS (1992); RAMÓN SÁNCHEZ MEDAL, LA LEY DE ASOCIACIONES RELIGIOSAS Y CULTO PÚBLICO (1992); LA NUEVA LEGISLACIÓN SOBRE LA LIBERTAD RELIGIOSA (1993); JOSÉ LUIS SOBERANES FERNÁNDEZ, DE LA INTOLERANCIA A LA LIBERTAD RELIGIOSA EN MÉXICO (1995); SURGIMIENTO DEL DERECHO ECLESIASTICO MEXICANO (1992); CUADERNOS DEL INSTITUTO DE INVESTIGACIONES JURÍDICAS DE LA UNAM, DERECHO FUNDAMENTAL DE LIBERTAD RELIGIOSA (1994); ESTUDIOS JURÍDICOS EN TORNO A LA LEY DE ASOCIACIONES RELIGIOSAS Y CULTO PÚBLICO (1994); LA LIBERTAD RELIGIOSA, MEMORIA DEL IX CONGRESO INTERNACIONAL DE DERECHO CANÓNICO (1996); Arturo F. Zaldívar Lelo de Larrea, *La Nueva Ley de Asociaciones Religiosas y Culto Público*, in REVISTA DE INVESTIGACIONES JURÍDICAS (1992).

4. See BURTON KIRKWOOD, THE HISTORY OF MEXICO 163-64 (2000) (stating that the war began in 1926 and that the two sides came to an agreement in September 1929).

5. See *infra* Part II.B for a description of these articles' contents.

6. See KIRKWOOD, *supra* note 4, at 148 ("On February 5, 1917, the Constitutionalists announced the creation of the national constitution.").

and 1924 (when President Plutarco Elias Calles rose to power and proposed to put the anti-religious principles into practice and to enact the corresponding regulatory laws),⁷ the articles were never really enforced.⁸ President Calles's attitude instigated a guerilla war-type, armed revolt in the center of the country.⁹ This revolt was known as the "Cristero War" because the insurgents revolted while crying, "Long live Christ our King."¹⁰ After Calles, General Álvaro Obregón was elected president of the republic but was assassinated before taking office.¹¹ Later, an interim president named Emilio Portes-Gil, an attorney, immediately sought to end the war.¹²

President Portes-Gil successfully negotiated an agreement with the Catholic hierarchy,¹³ but as will be discussed below, that agreement was an absurdity. Since the war was organized by the Catholic bishops and the agreed-upon peace conditions were dictated by the war chiefs, these peace "agreements" were irregular at best. So irregular was this situation that after laying down their arms, many Cristero soldiers were cunningly assassinated by government agents. Furthermore, the "agreements" that the Catholic bishops signed with the federal government required the

7. See MICHAEL C. MEYER & WILLIAM L. SHERMAN, *THE COURSE OF MEXICAN HISTORY* 582, 587 (5th ed. 1995) ("For a full decade beginning in 1924 Mexico found itself in the firm grip of General Plutarco Elias Calles. . . . Whereas Obregón had turned his back on the anticlerical articles of the Constitution, Calles decided to enforce them.").

8. See *id.* at 574 (describing President Obregón's decision not to implement Article 3); *id.* at 587 ("Obregón had turned his back on the anticlerical articles of the Constitution . . .").

9. See *id.* at 587.

10. See KIRKWOOD, *supra* note 4, at 164 ("One guerrilla campaign against the government whose members were identified as Cristeros due to their slogan 'Viva Cristo Rey' (Long Live Christ the King) lasted for nearly three years."); MEYER & SHERMAN, *supra* note 7, at 588 (mentioning that revolutionists cried, "¡Viva Cristo Rey!" as they fought).

11. See MEYER & SHERMAN, *supra* note 7, at 588–89 (describing President Obregón's assassination). Persons supporting the Cristero movement were allegedly involved in his death, but that accusation could not be proven conclusively. See *id.* at 589–90.

12. See *id.* at 590. The situation with the Catholic Hierarchy after the "agreements" was quite uncomfortable. Although peace had been realized, many of the faithful began to ask (and continue to ask), "So much bloodshed, and for what?" The great amount of bloodshed did not result in any amendment to the repressive constitutional text, and many Cristero soldiers had been killed. There continued to be a "sword of Damocles" over the Catholic Church, which could fall upon the church at any time. Given a choice between peace or war, the ecclesiastics would never have chosen war, and a preference for war was even less likely after the three-year Cristero War. *Id.*

13. See *id.* at 591 ("By late June [1929] a compromise had been hammered out.").

Cristeros to lay down their arms and open up their religious cult¹⁴—an act that had been suspended before the war as a measure of government repression. In return, the government agreed not to apply the aforementioned constitutional principles relating to religious freedoms.¹⁵ The agreements were absurd not only because of the aforementioned irregularities but also because of the Mexican government's agreement not to apply the Constitution. This agreement was invalid because the government does not have the authority to waive the Constitution—it should have promoted constitutional reform instead.

During the following decade—the 1930s—there was relative (but not complete) peace.¹⁶ The federal government did not officially harbor an attitude of hostility toward the Mexican Catholic Church, but there were, nevertheless, countless instances of open aggression against Catholics.¹⁷ Above all, acts of aggression were committed against Catholic monks and priests, many of whom were assassinated. During this decade, socialist education was forcibly established, both in public and private schools,¹⁸ which would set out “rational and exact knowledge of the universe and social reality,”¹⁹ a constitutional clause that we will reexamine below.²⁰

From 1940 onward, the religious situation in Mexico changed radically. General Manuel Avila Camacho, the new president of the republic, publicly announced that he believed in God.²¹ From that

14. *See id.* (“[T]he hierarchy ordered the Cristeros to lay down their arms and the priests to resume religious services.”).

15. *See id.* (“The government declared publicly that it had no intention of destroying the integrity of the church.”). Dwight Morrow, U.S. ambassador to Mexico, arranged and mediated with Calles, Portes-Gil, and Father John Burke, who was a prominent U.S. Catholic leader, to reach these “arrangements.” *See* KIRKWOOD, *supra* note 4, at 164; MEYER & SHERMAN, *supra* note 7, at 591.

16. *See* MEYER & SHERMAN, *supra* note 7, at 596–98 (describing the peaceful conditions prevailing during Lazaro Cardenas's presidency, which began in 1934).

17. *See* BRIAN HAMNETT, *A CONCISE HISTORY OF MEXICO* 234 (1999) (stating that although the Cristero War officially ended in 1929, “the conflict continued at the regional level for most of the 1930s”). This aggression did not extend to other religious faiths.

18. *See* MEYER & SHERMAN, *supra* note 7, at 602 (“When the PNR met in 1933 to nominate Cardenas for the presidency, it adopted a platform that, among other things, called for the teaching of socialist doctrine in the primary and secondary schools.”).

19. “Reforma al artículo tercero de la Constitución General de la República,” D.O., 13 de diciembre de 1934.

20. *See infra* note 26 and accompanying text.

21. *See* MEYER & SHERMAN, *supra* note 7, at 627 (“During the course of the campaign, when asked about his feelings toward the church, he answered with the words, *Soy creyente* [I

time until the constitutional articles were modified in 1992, no authority enforced the articles.²² During those fifty-two years (1940–1992), the articles were not reformed, despite the advances that actually had occurred, including Pope John Paul II’s official visit to Mexico in 1979.²³ Thus the seventy-five years of Mexican constitutional history from 1917 to 1992 were plagued with absurdities and injustices. This is the history, which we must neither deny nor ignore but, rather, try to understand.

It was in this atmosphere in which the government of Mexico approved the 1981 Declaration, surprising many Mexicans since the logical and coherent conclusion was that the country had in fact rejected it.

B. Mexico’s Restrictive 1917 Constitution

The original text of the 1917 Mexican Constitution included the following provisions regarding religious freedom:

- It established obligatory, secular education in both public and private schools.²⁴ In 1934, as a result of the rise to power of the regime headed by General Lazaro Cárdenas, Article 3 was amended from its concept of generalized secular education to the idea of “socialist education,” as discussed above.²⁵ The text read as follows:

The education that the State provides shall be socialist, and in addition to removing all religious doctrine, it will combat fanaticism and prejudices, for which the school shall organize its teachings and activities in a manner that builds in the youth

am a believer].”).

22. *See id.* at 627–28 (“[A]nticlericalism was not going to be a part of his administration No longer would the implementation of Articles 3, 27, and 123 be considered the touchstone of social progress.”).

23. *See* HAMNETT, *supra* note 17, at 290 (“Pope John Paul II made three visits to Mexico, in 1979, 1990 and 1999.”). Oddly enough, this was his first international visit as leader of the Catholic Church. *See id.* The reception that the Mexican people gave him was overwhelming. It was said that no political leader had ever attracted such a large number of people. Without a doubt, that occasion was a motivating factor in changing the church-state relations in Mexico and in expanding religious liberty.

24. *See* MEX. CONST. arts. 3.I, 3.II, 3.IV, & 3.VI (stating that “[e]lementary education shall be compulsory,” allowing both the state and private persons to engage in education, prescribing that the curriculum “shall be maintained entirely apart from any religious doctrine,” and stating that religions “shall not in any way participate in institutions giving . . . education”).

25. *See supra* notes 18–19 and accompanying text.

a rational and exact concept of the universe and of social life

[The State] will be able to grant authority to those who desire to provide education . . . according to, in every case, the following norms: . . . they must comply with the precepts in the first paragraph without any exceptions.²⁶

In 1946, the state returned to secular education exclusively, abandoning its socialist education policy.²⁷

- It prohibited religious corporations and ministers from establishing or directing primary schools.²⁸
- It prohibited the mention of religious votes and the establishment of monastic orders.²⁹
- It stated that public worship could only be celebrated inside houses of worship, which would be under constant vigilance by the authorities.³⁰
- It impeded “[r]eligious institutions known as churches” from acquiring, possessing, or administering real property, and those that did possess real property had to transfer it to the state’s control.³¹ As such, houses of worship from that time forward would be property of the state.³²

26. “Reforma al artículo tercero de la Constitución General de la República,” D.O., 13 de diciembre de 1934.

27. See MEYER & SHERMAN, *supra* note 7, at 627–28 (stating that Manuel Avila Camacho was elected president in 1940 and that during his administration “the ideology of the socialist school was abandoned”).

28. See MEX. CONST. art. 3.IV (“Religious corporations, ministers of religion, stock companies which exclusively or predominantly engage in educational activities, and associations or companies devoted to propagation of any religious creed shall not in any way participate in institutions giving elementary, secondary and normal education and education for laborers or field workers.”).

29. See *id.* art. 5 (“The State cannot permit the execution of any contract, covenant, or agreement having for its object the restriction, loss or irrevocable sacrifice of the liberty of man, whether for work, education, or religious vows. The law, therefore, does not permit the establishment of monastic orders, whatever be their denomination or purpose.”).

30. See *id.* art. 24 (“Every religious act of public worship must be performed strictly inside places of public worship, which shall at all times be under governmental supervision.”).

31. *Id.* art. 27.II.

32. See *id.* (“Places of public worship are the property of the Nation, as represented by

- It prohibited ministers or religious corporations from sponsoring, directing, or administering institutions whose purpose was aiding the needy, conducting scientific research, disseminating teachings, reciprocally helping members, or any other lawful purpose.³³
- It denied the solemn oath to any kind of legally binding authority.³⁴
- It expressly refused to grant the legal status of religious groupings “called churches.”³⁵
- It categorized ministers as professionals subject to corresponding legislation.³⁶
- Local legislatures were authorized to determine the maximum number of ministers in each federate unit (some only allowed five per state).³⁷
- It prohibited people not born in Mexico from being ministers in any denomination.³⁸
- It stated that ministers should not be permitted to criticize

the Federal Government, which shall determine which of them may continue to be devoted to their present purposes.”). Today the status of religions’ property is complicated because property that existed prior to 1992 continues to belong to the state, as do streets, public parks, and airports. Even so, they can be used only for religious objectives. As of 1992, legally organized religious institutions can acquire property for other objectives, and such property is regulated by special religious and civil rights legislation.

33. *See id.* art. 27.III (“Under no circumstances may institutions of this kind [engaged in assistance to the needy, scientific research, the diffusion of knowledge, etc.] be under the patronage, direction, administration, charge, or supervision of religious orders or institutions, or of ministers of any religious sect or of their followers . . .”).

34. *See id.* art. 130.

35. *See id.* (“The law does not recognize any personality in religious groups called churches.”).

36. *See id.* (“Ministers of denominations shall be considered as persons who practice a profession and shall be directly subject to the laws enacted on such matters.”).

37. *See id.* (“Only the legislatures of the States shall have the power to determine the maximum number of ministers of denominations necessary for local needs.”). The states that legislated in this area always prescribed ridiculous quantities. Furthermore, some states imposed ridiculous requirements upon ministers, such as requiring them to marry or outlawing fountains of holy water in temples.

38. *See id.* (“To practice the ministry of any denomination in the United Mexican States it is necessary to be a Mexican by birth.”).

the laws, the authorities, or the government.³⁹

- It ordered the exclusion of active and passive voting of ministers in the electoral process.⁴⁰
- It prohibited ministers from associating for political purposes.⁴¹
- It did not permit the validation of or give valid official recognition to courses aimed at training future ministers of religion.⁴²
- Denominational newspaper publications could not comment on political topics or report about acts by the authorities or about the working order of public institutions.⁴³
- Political associations could not have a name that related in any way to any religious creed.⁴⁴
- It prohibited political meetings in houses of worship.⁴⁵
- Ministers were prevented from testamentary inheritances, except from their own families within the fourth degree.⁴⁶

39. *See id.* (“Ministers of denominations may never, in a public or private meeting constituting an assembly, or in acts of worship or religious propaganda, criticize the fundamental laws of the country or the authorities of the Government, specifically or generally.”).

40. *See id.* (“[Ministers] shall not have an active or passive vote . . .”).

41. *See id.* (“[Ministers] shall not have . . . the right to form associations for religious purposes.”).

42. *See id.* (“No privilege shall be granted or confirmed, nor shall any other step be taken which has for its purpose the validation in official courses of study, of courses pursued in establishments devoted to the professional training of ministers of religion.”).

43. *See id.* (“Periodical publications of a religious character, whether they be such because of their program, title, or merely because of their general tendencies, may not comment on national political matters or public information on acts of the authorities of the country or of private persons directly related to the functioning of public institutions.”).

44. *See id.* (“The formation of any kind of political group, the name of which contains any word or indication whatever that it is related to any religious denomination is strictly prohibited.”).

45. *See id.* (“Meetings of a political character may not be held in places of worship.”).

46. *See id.* (“Ministers of denominations are legally incapacitated as testamentary heirs of ministers of the same denomination or of any private person who is not related to them within the fourth degree.”).

III. DEVELOPMENT OF THE DECLARATION AND MEXICO'S DUALITY ON THE ISSUE OF RELIGIOUS FREEDOM

As indicated earlier, Mexico passed through a long period of its history with a duality between reality and the express prescriptions of the text of the Constitution. In 1962, with that domestic situation as a backdrop, Mexico arrived at the U.N. negotiations aimed at preparing a declaration and a conference regarding religious freedom.

A. Development of the 1981 Declaration

The nearly twenty-year negotiation process of the 1981 Declaration divides into three stages. The first of these corresponds to the conception of the Declaration (1962–1967). The second stage corresponds to its drafting (1972–1981). The final stage corresponds to the adoption of the Declaration (1981). Analogous to the origin of the Universal Declaration on Human Rights,⁴⁷ the first period of development of the Declaration led to the determination of its form. Given the type of incorporated provisions in the first drafts of the Declaration and the concerns of various delegations, the U.N. General Assembly opted for the development of a declarative text and postponed (and continues to postpone) initiating a legally binding document.

This comparison to the Universal Declaration on Human Rights is important because it sheds light on Mexico's position in the international arena. In view of the difficulties in the multilateral arena of adopting a convention about religious intolerance and discrimination on one side and the same internal debate in Mexico on the other, the Mexican government's decision to seek a low profile during the negotiations in the General Assembly is understandable. In effect, the Mexican government's instruction to its delegation at the U.N. General Assembly in 1974 had a very clear meaning: with Mexico still under a constitutional impediment, the government ordered its delegation not to take part in the discussion.

It should be mentioned that at times the attitude of the Mexican government could be perceived as being somewhat schizophrenic, especially if the observer lacks an understanding of the domestic

47. G.A. Res. 217A (III), U.N. GAOR, 3d Sess., Supp. No. 1, at 71, U.N. Doc. A/810 (1948).

situation. An independent analysis of the reports of the Mexican delegation and the Mexican Secretary of Foreign Affairs could lead to the conclusion that the Mexican government did one thing in the international arena and another, totally opposite one, in the domestic arena.

Finally, on May 8, 1981, the Economic and Social Council (ECOSOC) of the U.N. recommended to the General Assembly that it consider the Declaration for its approval. On November 19, 1981, the Third Commission of the General Assembly recommended approval of the Declaration.

B. Mexico's Nonresponse to the Declaration

Ironically, throughout Mexico's governmental reports, any mention or substantive discussion of the Declaration is absent. Mexico's domestic *Work Report of the Mexican Secretary of Foreign Affairs of September 1, 1980 to August 31, 1981* does not even mention this major recommendation of ECOSOC. Rather, in discussing ECOSOC's 70th session,⁴⁸ the work report focuses more on the fact that Mexico supported the *Agreements on Civil and Political Rights and Economic and Cultural Rights of March 23, 1981*.

Mexico further disregarded the religious freedom work promulgated by the Human Rights Commission in its 37th meeting.⁴⁹ Instead, the secretary's report focused on several other issues, noting that the issue of human rights in Cambodia and El Salvador was particularly acute.⁵⁰ Therefore, the report indicated, the Commission would continue studying the developing law of human rights and ultimately develop a convention regarding the rights of children.⁵¹ Also, the report emphasized that Mexico should cosponsor problem-solving projects related to the situations in Chile and the Western Sahara and projects related to the protection of migrant workers.⁵² Nevertheless, the report made no mention of the Declaration.

48. These sessions were conducted in New York City from April 8–14, 1981.

49. This meeting took place between February 2 and March 13, 1981.

50. See *Work Report of the Mexican Secretary of Exterior Relations of September 1, 1980 to August 31, 1981*.

51. See *id.*

52. See *id.*

Furthermore, in the *Work Report of the Mexican Secretary of Foreign Affairs of September 1, 1981 to August 31, 1982*, the chapter corresponding to the 36th session of the U.N. General Assembly (the period during which the Declaration was approved) made no mention of religious freedom nor did it indicate that the Declaration was even passed on November 25, 1981.

Despite their conspicuous absence, these omissions in the Secretary of Foreign Affairs' reports can possibly be attributed to procedural protocol. For example, perhaps the Secretary of Foreign Affairs did not consider it necessary to refer to a declaration that was still undergoing negotiations, such as the work of the ECOSOC. The same criteria could have been applied to the efforts of the Commission of Human Rights.

C. Resolving the Incongruence: Mexico & the Second Stage of Negotiations

To better understand the apparent incongruence of Mexico's position discussed above, it would be helpful to consider the second stage of the negotiations of the Declaration, particularly the Declaration project of July 6, 1971. Some of the Declaration's provisions reveal possible explanations for Mexico's position. For example, Article 6, particularly subsection 4, and Article 10—arguably some of the most contentious of the 1971 interim provisions discussed in the negotiations—are stressed in the Mexican delegation's report.

It is, nevertheless, regrettable that the Mexican Delegation's report did not illuminate with greater detail the development of the negotiations. As a result, the Mexican Delegation Report to the 36th session of the U.N. General Assembly (corresponding to the Third Commission) states the following: "Subject 75.A/C. 3/36/L.45. Project of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, recommended by ECOSOC in its Resolution 1981/36."⁵³

The above-referenced document was the result of great compromise between participating countries. Unsatisfied with the current draft, the Islamic countries entered into prolonged

53. Informe de la Delegación de México al XXXVI período de sesiones de la Asamblea General de la ONU, correspondiente a la tercera comisión del 10 de Septiembre 1980 al 31 de Agosto de 1981.

discussions with each other, with the western group, and with the socialist group, resulting in a revised version of the Declaration.⁵⁴ This version was approved by consensus in both the Third Commission and the plenary session of the General Assembly.

With respect to the original document, the following amendments were added in the revised document (L.45):

- Preamble Paragraph two eliminated the words “and change” and added “whatever” before own beliefs.
- Preamble Paragraph three added “whatever” between “religion or” and “belief.”
- Article 1, Paragraph 1 eliminated “to adopt” and added “whatever” between “religion” and “belief.”
- A new Article 8 was added, which read as follows: “Nothing in the present Declaration shall be construed as restricting or derogating from any right defined in the Universal Declaration of Human Rights”

These amendments were added in order to accommodate the Islamic countries’ prohibition of changing one’s religion, which according to Islamic law constitutes apostasy and is punishable by death.

The absence of detailed explanations in the Mexican Delegation’s report concerning the content and scope of some of the proposals of the 1981 Declaration’s articles does not prevent us, however, from deducing the reasons for which Mexico kept a low profile during the negotiations of the Declaration. The Mexican Delegation’s declaration, which was made after adopting the declarative instrument, provides us with greater elements of understanding.

Immediately after adopting the Declaration, the Mexican Delegation made the following pronouncement:

The delegation of Mexico joins with the consensus in the Commission to approve the Declaration that accompanies

54. *Note by the Chairman*, U.N. GAOR, 3d Comm., 36th Sess., U.N. Doc. A/C.3/36/L.45 (containing draft version of the *1981 Declaration*).

Document A/C. 3/36/L.45 concerning the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, because the Mexican Constitution protects and recognizes to every person located within Mexican territory, both natives and foreigners, the highest freedom of thought, of conscience and of religion. The exercise of this freedom, which includes the unrestricted right of any person to choose without outside coercion to have or adopt a religion or belief, has no limitations in Mexico in collective public demonstrations or in the sphere of teaching, that which is prescribed in the Constitution itself and the applicable laws, of which agrees with the foregoing provisions in subsection 3, article 1 of the Declaration that we have just approved with the first paragraph of article VI of the same document.⁵⁵

It is worth pointing out that the approval of the Declaration came to pass after several years of negotiation in the Commission of Human Rights and in ECOSOC. Also, it was considered by the President of the Third Commission to be one of the most relevant actions during the 36th session.

As a corollary to this brief explanation, we can affirm that there exists confusion on the concept of religious freedom. Although clarity was (apparently) possible on the national level in the area of freedom of religion as an individual right, the perspective became slightly obscured when it spoke of the public and collective exercise of this right (i.e., religious observance). This was where a duality between Mexican reality and the Mexican *Magna Carta* existed.

Given this perspective, we could also argue that the position Mexico took during the negotiations of the Declaration was not just the reflection of an ongoing internal debate, but could also be considered one of the precursors to the constitutional reform of 1992. This constitutional reform had the objective of giving *de jure* recognition to a *de facto* situation.

IV. MEXICO'S CONSTITUTIONAL REFORM AND LINGERING WEAKNESSES

In 1992, Articles 3, 5, 24, 27, and 130 of the Mexican Constitution—all of which concern religious freedom—were

55. The source of this text is an unpublished document on file with the Mexican Secretary of Foreign Affairs.

radically reformed.⁵⁶ As a result of these constitutional reforms, when

56. The law does not officially recognize churches or other religious associations. It simply gives them a legal title—"religious association"—which is the means by which they become a legal entity and become entitled to rights under the Law of Religious Associations and Public Worship ("Ley de Asociaciones Religiosas y Culto Público" or "LARCP").

To register as a religious association, an entity must apply to the Secretary of Government, who will verify that the group practices, propagates, or instructs according to a religious doctrine or pursuant to a set of religious beliefs; has acted in Mexico for at least five years; and has well-established roots within the country.

There is a possibility, which is very interesting from all points of view, that each of the internal divisions of a religious association, in addition to the legal entity itself, is considered to be a religious association. For example, in the Catholic Church, all of the dioceses and religious congregations may be considered to be "religious associations."

Article 9 of the LARCP recognizes the following rights for religious associations:

1. The right to identify itself through an exclusive denomination.
2. The right freely to organize its internal structures and adopt the statutes or norms that the typical structure of authority requires, including the formation and designation of its ministers.
3. The right to effect public acts of worship, such as propagate its doctrine, as long as they do not break any laws in so doing.
4. The right to use all legal means to fulfill their religious purpose, as long as the purpose is fair and not-for-profit.
5. The right to participate, either alone or in association with physical persons, in the formation, administration, support, or operations of charitable or educational institutions, as long as they obey the law and do not have profit motives.
6. The right to use public property for religious purposes, within the terms that the applicable regulations dictate.
7. The right to enjoy all other rights that the laws guarantee to them.

"Ley de Asociaciones Religiosas y Culto Público," D.O., 15 de julio de 1992.

Another very important issue regarding the property of religious associations, since Article 27, Clause 2 of the Constitution allows them to hold only property that is necessary to fulfill their religious purpose, has to do with preventing property from falling into the hands of the deceased. The LARCP establishes a "declaration of procedure," which describes the process for acquiring real property through inheritances, bequests, and trusts. This declaration applies only to educational, health, or religious institutions. It states that such institutions should petition the Secretary of Government, and if he does not respond within forty-five days, a presumption arises that he has conceded.

When an association registers, the Secretary makes a general declaration of procedure for all of its property.

The LARCP establishes four registration agencies: one for religious associations, one for the associations' real property, one for national property (remember that until 1992 all the temples were property of the nation) that the associations are using, and one for the ministers of religion.

Now, can a religious group act freely in Mexico even if it cannot register or if it chooses not to register? It certainly can. It can even have legal rights—like a civil association has, for example—even though it does not have all the rights that registered religious associations have (those rights being defined in clauses 4, 5, 6, and 7 of Article 9 of the LARCP).

The representatives of the religious associations should be Mexicans. In principle, each religious association designates who its ministers are. However, for any religious association

analyzing religious legal matters, one must ask whether it is in accordance with the U.N. 1981 Declaration. Despite the great efforts for advancement in religious freedom that have been made in Mexico, I think that some black marks related to the Declaration need to be overcome.

In the first place, the problem with public worship persists now that constitutional Article 24 establishes that public worship must ordinarily be conducted in houses of worship and only in extraordinary circumstances outside them—generally requiring governmental authority.⁵⁷ Such a policy contradicts what has been established in various human rights declarations and conventions and, of course, the first article of the Declaration. The same can be said about the requirement of obtaining permission from the Secretary of Interior prior to the mass media transmission of ceremonies of religious worship,⁵⁸ which represents not only a human rights violation but also a constitutional violation.

However, there are even more blatant forms of religious discrimination. Although the new third Paragraph of Article 1 of the Mexican Constitution, added on August 14, 2001, prohibits any form of discrimination (and particularly discrimination for religious motives),⁵⁹ some clearly discriminatory provisions persist. For example, the Constitution prohibits ministers from holding public

that does not designate its ministers, the law treats as ministers those who are principally in charge of directing, representing, or organizing the religious group. The law applies only to ministers of registered religious associations. It does not address ministers of nonregistered groups or ministers that do not belong to any group.

The current Mexican legislation allows foreigners to be ministers of religion. Similarly, it allows ministers of religion to vote in elections. However, they cannot be candidates unless they leave their ministry five years before the election. They cannot hold public office unless they leave their ministry three years before holding a major office or six months before holding a minor office.

Ministers of religion cannot take part in political causes, proselytize, or campaign against candidates or political parties, or oppose the laws or institutions of the country in their religious ceremonies, propaganda, or publications. Also, they cannot insult or degrade the symbols of the nation, neither can their relatives within four degrees or their religious associations.

57. See MEX. CONST. art. 24.

58. See “Ley de Asociaciones Religiosas y Culto Público,” D.O., 15 de julio de 1992, art. 21 (“Las asociaciones religiosas únicamente podrán, de manera extraordinaria, transmitir o difundir actos de culto religioso a través de medios masivos de comunicación no impresos, previa autorización de la Secretaría de Gobernación.”).

59. See MEX. Const., art. 1 (“Discrimination based on . . . religion . . . is prohibited” (trans.)).

office⁶⁰ or participating in public elections as candidates.⁶¹ Further discrimination includes prohibiting religious associations from having printing and electronic capabilities of social communication, such as newspapers, radio stations, or television stations.⁶² The gravity of these discriminatory provisions is increased by the fact that they, in turn, make it very difficult for religious associations to acquire real estate and to receive permission from the Secretary of Government regarding the most contentious subject of all, religious education.⁶³

The problem surrounding the conscientious objection of the children of Jehovah's Witnesses is terrible in Mexico since minors belonging to that religion are fined and expelled from school for refusing to participate in civil ceremonies,⁶⁴ a contradiction to the provisions stated in Article 5, Paragraph 3 of the Declaration.⁶⁵

60. This is particularly a problem in small, rural, evangelical communities in which the pastors cannot be sustained by the parishioners and need to work. Preventing them from holding public office injures them enormously, but above all it represents a serious limitation—for the ministers of all religions—on their freedom to work, especially in religious capacities. This is a grave discrimination.

61. See MEX. CONST. art. 130.D (“As citizens, ministers of religion will have the right to vote, but not to be candidates.” (trans.)).

62. See “Ley de Asociaciones Religiosas y Culto Público,” D.O., 15 de julio de 1992, art. 16 (“Las asociaciones religiosas y los ministros de culto no podrán poseer o administrar, por sí o por interpósita persona, concesiones para la explotación de estaciones de radio, televisión o cualquier tipo de telecomunicación, ni adquirir, poseer o administrar cualquiera de los medios de comunicación masiva.”).

63. The problem is that this law is perceived as anti-religious. If the parents of a family want their children to receive a religious education, they must register the children at a private school. However, private schools are almost never a realistic option for poor people (except when they can get a scholarship) because of the high price. Hence, yet another form of discrimination—economic discrimination (a very despicable form of discrimination)—is created.

64. Several such instances have occurred. A description of the most documented case can be found in recommendation 01/2002 of the Mexican National Commission on Human Rights (Jan. 23, 2002).

65. This paragraph reads as follows:

The child shall be protected from any form of discrimination on the ground of religion or belief. He shall be brought up in a spirit of understanding, tolerance, friendship among peoples, peace and universal brotherhood, respect for freedom of religion or belief of others, and in full consciousness that his energy and talents should be devoted to the service of his fellow men.

See 1981 Declaration, *supra* note 1, at 171 art. 5.3; see also Javier Martínez Torró, *Los Testigos de Jehová y la Cuestión de los Honores a la Bandera en México*, GACETA DE LA COMISIÓN NACIONAL DE LOS DERECHOS HUMANOS, Apr. 2000, at 7.

V. CONCLUSION

It is obvious that the constitutional-religious reform of 1992 was a very important and transcendent step in Mexico; nevertheless, there are some points pending that must be resolved before we are truly able to say that in Mexico we live with full, modern, and democratic religious freedom.